

ELECTRICITY OVERSIGHT BOARD MEETING

MARCH 2, 2000

10:00 a.m.

Reported By: Kerry L. Viens, CSR No. 11942

1 CHAIRMAN KAHN: Good morning. Let's get started.
2 Good morning, everyone. Welcome to the annual meeting of
3 the Electricity Oversight Board. We won't have to review
4 any minutes. We don't have any minutes, but none of us
5 remember them anyway. My name is Michael Kahn, and I'm
6 the Chairman of the Board and, as all you know, recently
7 taken this position.

8 To my right is Bruce Willison, Dean of the
9 Anderson School of Business at UCLA and also a new board
10 member, and to his right is John Rozsa, who is
11 representing Senator Peace, who we hope will come later.
12 And to -- Mr. Lyons is back there representing
13 Assemblyman Wright, and Assemblyman Wright hopefully will
14 join us in a bit also.

15 We have a lengthy agenda, and we're going to try
16 to have the session mark an opportunity for you to
17 introduce yourselves and to allow us to start to
18 understand the various interests that you represent, but
19 you're going to have to bear with us. We have a learning
20 curve, and we don't know all of your names, and we don't
21 know all of you, so I'd appreciate it if you talk you
22 identify yourselves, that you do it as clearly as you
23 can -- oh, that's right.

24 Good morning, Senator Bowen.

25 SENATOR BOWEN: Good morning.

1 CHAIRMAN KAHN: We are honored by the presence of
2 Senator Bowen, who has just joined us also.

3 There are a number of discussion items on the
4 agenda, and I'd like to make a couple of preliminary
5 comments about the discussion items. First of all, we
6 are a new EOB, and we are going to establish our own
7 method of working and organizing the business of the EOB,
8 and we are going to exercise our oversight responsibility
9 in a way that we develop and is comfortable with our
10 method, and so we would ask you to bear with us and not
11 make any preconceptions about the meaning of our setting
12 anything on the agenda.

13 We want you to understand that when we say,
14 "discussion," we mean to discuss something so we can
15 understand it. Please understand that Mr. Willison and I
16 are under a disability because of the open meeting laws
17 and the fact that we're the only two members of the
18 board, and the only time we can discuss things that
19 pertain to the Oversight Board are in these meetings, so
20 we are going to use that as an opportunity to have
21 discussions and allow us to comply with the law.

22 We'd like to indicate to you at the outset that
23 our number one priority and our number one responsibility
24 is reliability, and in representing the people of the
25 state of California, we are going to be deeply concerned

1 and we are going to be energetic in our inquiries on the
2 issue of reliability.

3 With respect to the PX, we believe that we have a
4 responsibility to work with the PX for efficient markets
5 and efficient market rules, and we are going to do our
6 best to understand what's going on there and what is
7 clearly a developing process.

8 A couple of other things about today. We are
9 going to try as best possible in this room in this
10 circumstance to be informal. We are also going to try
11 the best we can to have open conversation, and what I'd
12 like to avoid is any atmosphere of criticism or acrimony,
13 and so we're hopeful that we'll take the criticism and
14 the comments about matters in a good spirit. We ask you
15 to not hold back and tell us what you think. We're not
16 going to be defensive, but we're going to try to forge a
17 new future that allows us all to work more productively
18 together.

19 At this point, I'd like to invite my co-new
20 member my to make a few comments.

21 MR. WILLISON: No. I'd say well spoken, Mr.
22 Chairman.

23 CHAIRMAN KAHN: Senator Bowen, would you like to
24 make some opening comments?

25 Mr. Rozsa?

1 Mr. Heath, do you have any announcements for us?
2 This is it Mr. Gary Heath, the Executive Director of the
3 EOB.

4 MR. HEATH: Thank you, Mr. Chairman. Since we've
5 had a board -- Mr. Chairman, Mr. Willison, Senator Bowen,
6 the only announcement I'd want to make is there are some
7 materials about today's meeting outside the door.
8 There's also sign up sheets for those of you have who
9 want to get on the mail lift, and I believe we'll be
10 requesting a closed session to discuss some litigation
11 later on in the meeting.

12 CHAIRMAN KAHN: In terms of planning, I'm going
13 to seek the pleasure of the Board, but if we look like
14 we're going to go into the noon hour, we probably will
15 take a lunch break. If we take a lunch break, what we'll
16 probably do is go directly from the lunch break to the
17 closed session, so you folks won't be inconvenienced, and
18 then we'll come back and finish the remainder of the
19 agenda.

20 With all of that said, we should turn to the
21 first item of the agenda, and I think it's best that we
22 take items 1 through 8.

23 MR. HEATH: That is correct, Mr. Chairman.
24 Number 8 includes Mr. Saltmarsh, Mr. Rasmussen, and Mr.
25 Rich Jacobs.

1 CHAIRMAN KAHN: Before we go into the records,
2 our presence has been graced by Assemblyman Wright.

3 Assemblyman, you missed my opening comments, but
4 we never left. I'd be delighted to hear from you, and we
5 also have Carolyn Veak-Hunter from your office with us.

6 Do you want to make any opening comment?

7 ASSEMBLYMAN WRIGHT: I think, discretion being
8 the better part of valor, that I'll just wait to hear
9 what happens and comment later.

10 CHAIRMAN KAHN: Well, then, perfect -- the
11 ringing endorsement to my opening comments.

12 Okay. Would the panelists introduce themselves,
13 please.

14 MR. RASMUSSEN: Yes, Good morning. Scott
15 Rasmussen, General Counsel for the California Power
16 Exchange. It's a privilege to be here this morning.

17 MR. JACOBS: Good morning. I'm Rich Jacobs,
18 Senior Corporate Counsel and Secretary for the ISO.

19 MR. SALTMARSH: And I'm Erik Saltmarsh, Chief
20 Counsel to the Board, and I was asked to introduce this
21 series of items to the Board. As the Board is, I
22 believe, most of the audience attendees who I recognize
23 are aware, there have been some items in a state of
24 uncertainty of the operating Power Exchange over the last
25 two years due principally to some conflicting

1 jurisdictional interpretations between the state
2 government and the Federal Energy Regulatory Commission
3 over the governing structure as it was originally
4 described in California's restructuring legislation.

5 Principally, as a result of efforts to settle
6 those jurisdictional disputes, there was an enactment
7 last year Senate Bill 96 --

8 CHAIRMAN KAHN: Pardon me, Mr. Saltmarsh, if I
9 could interrupt you for a moment. We're now complete.
10 Senator Peace has just joined us.

11 Senator Peace, we had introductory remarks, and
12 we are into items number 1 through 8 of the agenda, and I
13 believe that you are familiar with everyone at the table.
14 Would you like to make some introductory remarks here?

15 SENATOR PEACE: No. I apologize for being late.
16 Where's the coffee?

17 CHAIRMAN KAHN: I'm wondering that too.

18 SENATOR PEACE: Are we getting any assistance
19 here today?

20 MR. HEATH: It's supposed to be here.

21 SENATOR PEACE: Let me make a call.

22 CHAIRMAN KAHN: Mr. Saltmarsh?

23 MR. SALTMARSH: Thank you, Mr. Chairman. Senate
24 Bill 96 was enacted to make an adjustment to the
25 statement in California law regarding the

1 characterization of the governance of the Independent
2 System Operator and Power Exchange. The enactment of
3 that statute has resolved the governance related
4 disagreement between the state of California and Federal
5 Energy Regulatory Commission.

6 Complying with the terms of that settlement
7 requires that the Independent System Operator and Power
8 Exchange each make some conforming revisions to their
9 operating bylaws. The items that are before the Board
10 today under numbers 1 through 8 fall into three
11 categories related to governance. One of these, with
12 respect to each corporation, would extend the terms of
13 office of the existing governing boards to allow those
14 governing boards to serve until they could be replaced
15 under amended bylaws to conform with the amendments to
16 California laws and the state-federal settlement.

17 The second category of items before the Board
18 today are the bylaw revisions in substance that were made
19 by the Independent System Operator and Power Exchange and
20 are presented to this Board which the California
21 Independent System Operator and Power Exchange will
22 characterize as conforming to the settlement between the
23 state and federal government.

24 I will defer to the representatives of those two
25 entities to answer specific questions about those bylaw

1 amendments.

2 And the third category are some individuals who
3 have not presented to the Electricity Oversight Board
4 pursuant to the provisions that have been in place in
5 governance of those two entities of the Independent
6 System Operator and the Power Exchange for appointment
7 for conservation of the Electricity Oversight Board, and
8 we will deal with those if there need to be more specific
9 information as we get closer to the items.

10 The first items are amendments to the bylaws of
11 California Power Exchange to extend the term of
12 governance. I would hand the microphone over to Mr.
13 Rasmussen to make any explanation he feels is necessary
14 on the specifics of those.

15 CHAIRMAN KAHN: Mr. Saltmarsh, I'm sorry.
16 Assemblyman Wright has a question.

17 ASSEMBLYMAN WRIGHT: The action that we take
18 here, will this resolve the lawsuit that we had, or does
19 the lawsuit continue relative to the ISO?

20 MR. SALTMARSH: As of today, there is still a
21 matter pending before the Federal District Court of
22 Appeals for the District of Columbia Circuit, which is
23 really extended before that court, both the Oversight
24 Board and the FERC asked the Court to hold that action in
25 abeyance until we could work issues out and then ask the

1 Court to dismiss.

2 If the Electricity Oversight Board finds that the
3 bylaws that are submitted today conform to that SB 96
4 adjustment, there will be no items left in question, and
5 we can immediately inform the Court that we wish to
6 withdraw any pending dispute. It is the FERC's belief
7 that the dispute is resolved, and they are fully prepared
8 to have the action withdrawn.

9 CHAIRMAN KAHN: Mr. Rasmussen?

10 MR. RASMUSSEN: Thank you, Mr. Chairman. Very,
11 very brief. The initial terms of office presented in our
12 bylaws for our governors was needed to be moved because
13 of the dispute between the state and the NBRC that Mr.
14 Saltmarsh has just described, so we undertook to amend
15 the bylaws twice to extended terms, and these are now
16 before you for your approval.

17 I should note one extra item, which is that
18 shortly I would expect that our board would need to amend
19 this provision of the bylaws to set a date for the
20 commencement of our new terms. We will take that action
21 most likely, I would think, in May to amend the bylaws.
22 The date I would expect the new terms to commence would
23 be June the 1st. We are in discussions with the
24 Oversight Board staff about how to coordinate the terms
25 that are subject to the Oversight Board confirmation.

1 Those are the consumer class governors and the terms of
2 the seller class governors that are subject to the
3 confirmation of our governing board.

4 CHAIRMAN KAHN: Are there any questions from
5 the --

6 MR. ROZSA: So what is the new end date that is
7 created for the board terms with this extension? Is it
8 200 days?

9 MR. RASMUSSEN: I calculate -- the earliest
10 date -- I believe there was a series of events, and it
11 was predicated on the earliest of these events. One of
12 the events was the passage of SB 96, and we had a period
13 of days running after that passage, and if I calculate
14 correctly, June 3rd is the date when that --

15 MR. ROZSA: As of June 3rd, this is an extension
16 of the term until June 3rd. Is that what you're saying?

17 MR. RASMUSSEN: The current provision, yes, it
18 was. The practical effect of that revision as we speak
19 now is June 3rd.

20 MR. ROZSA: So this is needed to continue the
21 terms until you finish the election which you have?

22 MR. RASMUSSEN: Correct, until we finish the
23 election and establish the commencement date for new
24 terms.

25 MR. ROZSA: So the commencement date for the new

1 term is June 3rd?

2 MR. RASMUSSEN: Subject to finalization, June
3 1st, June 3rd. We've discussed these dates. It's
4 definitely in that area.

5 MR. ROZSA: Okay. Thank you. I'd like to ask
6 the same questions.

7 MR. JACOBS: Actually, the ISO -- we set a date
8 certain which was March 31st. This was back last summer.
9 The date was set at our insistence. Our intention is
10 hopefully, after today's meeting, to process probably
11 starting next week and to have nominees before the
12 Oversight Board sometime after our board meeting. Once
13 those nominees are confirmed by the Oversight Board, we
14 plan to immediately seat them and consider the time
15 between March 31 and the time we seat our new board as
16 the beginning date of the terms, sort of staggering it
17 some to hopefully give you a little bit of relief as
18 opposed to having them all coming in at the same time,
19 not exactly have the same term ending time.

20 MR. ROZSA: So if it expires on March 31st but
21 you won't have election action completed by March 31st,
22 then what does this do about the status? In other words,
23 is this an action which is good for the next, you know,
24 125 days?

25 MR. JACOBS: No. Actually it would -- right now

1 our terms under the current bylaws have already expired.
2 Our board members are allowed to continue until
3 sufficient time as their replacements are nominated.

4 MR. ROZSA: Thank you.

5 CHAIRMAN KAHN: Any other questions? Is there
6 any public comment? I'd like to obtain the motion.

7 MR. WILLISON: Mr. Chairman, bear with me as I
8 read in into the record. The California Power Exchange
9 has requested the Electricity Oversight Board to approve
10 the California resolution -- excuse me. California Power
11 Exchange resolution to amend the California Power
12 Exchange bylaws to extend the initial terms of governors
13 to, as said earlier, 250 days from the date of the final
14 disposition of the proceedings currently pending in U.S.
15 Court of Appeals, District of Columbia Circuit, case
16 number 98-1225 and 98-1226, or a full settlement between
17 the parties (inaudible) December 31st, 2000.

18 CHAIRMAN KAHN: I understand, Mr. Saltmarsh, in
19 as much as there are only two of us that we need a
20 second, that I can and have to second; is that correct?

21 MR. SALTMARSH: That is it correct, Mr. Chairman.

22 CHAIRMAN KAHN: Well, then, I second the motion
23 and call the vote. All in favor?

24 MR. WILLISON: Aye.

25 CHAIRMAN KAHN: Aye.

1 CHAIRMAN KAHN: It passes two to nothing.

2 The second item -- Mr. Jacobs, do you have
3 anything to add?

4 MR. JACOBS: On the general bylaw amendment --
5 well, first of all if you have any questions, I'd point
6 out we made a number of clean-up and technical changes to
7 the bylaws that were not required by SB 96.

8 CHAIRMAN KAHN: Actually, right now we're only on
9 Item No. 2. I believe Mr. Rozsa did ask you questions
10 about that a moment ago.

11 MR. JACOBS: As I say, our plan is to expire
12 March 31st, and for our board members to continue until
13 such time as we can get a few people elected and
14 confirmed, and March 31st would be the date that our
15 terms will expire.

16 CHAIRMAN KAHN: Do you have any other questions?
17 Any public comment?

18 Mr. Willison, your turn again.

19 MR. WILLISON: I'm happy to. I'm not sure I have
20 these in the proper order here. This one --

21 CHAIRMAN KAHN: I think the wording is the same
22 as the last resolution is that --

23 MR. SALTMAN: Other than the specific wording
24 about the 250-day extension.

25 MR. WILLISON: This one is specifically for the

1 ISO, right?

2 CHAIRMAN KAHN: Mr. Saltmarsh, what we're doing
3 here is we're just doing the same thing we did for the PX
4 with the ISO, yes?

5 MR. SALTMARSH: Yes. We're doing the same thing
6 in that you are approving the submitted bylaws.

7 CHAIRMAN KAHN: I'll accept the motion that
8 incorporates by reference that --

9 MR. WILLISON: So moved.

10 CHAIRMAN KAHN: Second.

11 MR. SALTMARSH: I will also ensure that a formal
12 resolution reflecting that language is put before you.

13 CHAIRMAN KAHN: We want to make sure that Mr.
14 Jacobs is happy with the wording also.

15 MR. JACOBS: That's fine.

16 CHAIRMAN KAHN: Any discussion?

17 MR. WRIGHT: So I understand that a copy would
18 correctly reflect the paper that's in front of us is
19 inaccurate, but the actual motion will be corrected for
20 the record?

21 MR. SALTMAN: The action by the board will
22 reflect the actual date that is in the draft bylaw that
23 was put before the board, so the motion to approve the
24 amendment as submitted by the ISO and the Oversight
25 Board's record of action will reflect that.

1 CHAIRMAN KAHN: Thank you.

2 All in favor?

3 MR. WILLISON: Aye.

4 CHAIRMAN KAHN: Aye.

5 CHAIRMAN KAHN: Motion passes two to nothing.

6 Item No. 3. Mr. Saltmarsh, do you want to
7 comment on that first, or should we ask Mr. Rasmussen?

8 MR. SALTMARSH: Mr. Chairman, as mentioned, Item
9 No. 3 are amendments to the body of the bylaws on
10 issues -- all issues other than the specific extension of
11 the terms of the initial Board of Governors, beyond
12 saying that, I will defer to the representatives in front
13 of you on the specifics of those proposed amendments.

14 MR. RASMUSSEN: Yes. Mr. Chairman, we needed to
15 do a work compliance filing in light of the directive
16 given to us by the FERC that is before you. That filing
17 conforms our bylaws to SB 96. FERC accepted that filing,
18 and by that action approved these amendments and by
19 implication accepted the amendments to conform to the
20 state and federal resolution of the difficulties.
21 Included also in the motion are various changes mostly of
22 the operational type to the bylaws that our governing
23 board has made on several occasions, and we would submit
24 those to the extent that this board is required to pass
25 and approve on those amendments under SB 96 for your

1 approval at this time.

2 I just note that we do concur with the staff
3 recommendation which is in your packet.

4 ASSEMBLYMAN WRIGHT: The FERC compliance that you
5 reference, is it written?

6 MR. RASMUSSEN: The order itself is written.

7 ASSEMBLYMAN WRIGHT: So we won't go around in an
8 year or so if there's a discrepancy as to what they did
9 and didn't approve?

10 MR. RASMUSSEN: No.

11 CHAIRMAN KAHN: Yes. Senator Peace?

12 SENATOR PEACE: I'm a bit concerned that we've
13 mixed some apples and oranges. Provisions associated
14 with FERC compliance are here, but you also have other
15 bylaw changes that have nothing to do with FERC
16 compliance.

17 On page 18, you changed the board compensation
18 formula to allow for the Chairman of the Board to be
19 paid. This is the first I've ever heard of such a
20 proposal. Since it certainly wasn't an issue in our
21 disagreements with FERC and absolutely was never
22 contemplated in SB whatever -- the legislation that
23 authorized it, I'm a little nonplused as how something
24 could get all the way down through the process and we
25 just found out about it here. It must have been a very

1 interesting process at the PX that you managed to keep a
2 lid on this proposal. I'm very impressed with your
3 security operations.

4 MR. RASMUSSEN: The item in question dates back
5 to, I believe, February, and --

6 SENATOR PEACE: This February?

7 MR. RASMUSSEN: A year ago. And I would have to
8 check, but subject to check, I believe it was certainly
9 agendized properly for action on our board, and then once
10 the action was taken, we forward it to the Oversight
11 Board for approval under the then current requirements.
12 Going back to the separation of the two filings, that's
13 procedural in nature where we needed to make a compliance
14 filing. Under FERC's rules, you need to only file those
15 items which comply with an explicit directive that FERC
16 has issued.

17 SENATOR PEACE: From our perspective, I think
18 it's troubling, given begin that the Oversight's
19 responsibility when you bring to us a consolidated
20 proposal and attempt under one motion to approve items
21 that had nothing do with FERC compliance under the
22 headline of getting FERC compliance.

23 Let's all be adults here. I think we all know
24 what was going on here. This was an effort to slip this
25 under the momentum of our understandable interest in

1 resolving the FERC disagreements. What otherwise would
2 be maybe even something we would have agreed to, but it
3 certainly would have been subject to pretty significant
4 discussion. It's a very significant policy decision to
5 make the chair paid. And again, it was something that
6 was discussed, debated, and overtly rejected when the
7 legislation was adopted.

8 MR. RASMUSSEN: The only response I can make,
9 Senator, is at the time --

10 SENATOR PEACE: I'm -- Senator Bowen, have you
11 heard anything about this?

12 SENATOR BOWEN: No.

13 SENATOR PEACE: Senator Wright?

14 ASSEMBLYMAN WRIGHT: No. That's the first time.

15 SENATOR PEACE: I would venture to guess if I
16 walk down into the Governor's office and asked everyone
17 that works for the Governor if they have heard anything
18 about this -- what time did you have this meeting last
19 February? About 3:00 a.m.?

20 MR. RASMUSSEN: Regularly scheduled.

21 CHAIRMAN KAHN: Senator Peace, I think your
22 point's well taken. I'd like to ask a question of Mr.
23 Saltmarsh.

24 Mr. Saltmarsh, is there a way to separate the
25 changes requested that are necessary for FERC with the

1 other changes that Senator Peace has identified?

2 MR. SALTMARSH: The answer is definitely yes. I
3 would also note that there are probably two categories or
4 subcategories of FERC compliance changes that each of the
5 corporations have, at times, made some adjustment based
6 on FERC guidance to provisions that were outside what
7 have been the state-federal dispute issues, so I would
8 have to go back and review exactly what guidance was in
9 FERC's compliance orders that they were trying to meet.
10 Some of them were to comply with state-federal
11 settlement. There may have been some others, and then
12 there's a third category that would not be required to
13 conform with either state or federal --

14 CHAIRMAN KAHN: Do you have a list that separates
15 the two right now or not?

16 MR. SALTMARSH: I'm not aware of such a list for
17 either corporation right now.

18 MR. WILLISON: Is there separation by various
19 articles?

20 MR. SALTMARSH: It is the case that all of the
21 provisions related to the state-federal settlement do
22 fall within articles 3, 4, and 5 with respect to the
23 Power Exchange, I believe. Correct me if I'm wrong.

24 MR. JACOBS: It's 3, 4, and 9.

25 MR. SALTMARSH: 3, 4, and 9 for the Independent

1 Systems Operator. However, the specific provision which
2 has been discussed here is also within those -- one of
3 those articles. So it is -- while it would be fair to
4 say that anything that's not in one of those three
5 articles of the bylaws with respect to each corporation
6 is not part of complying with the settlement, there may
7 be some things that are in article 3, 4, and 9 that are
8 compliance and some that are not.

9 CHAIRMAN KAHN: Mr. Peace, I think we only have a
10 couple of questions for the panelists. We are either
11 deferring, and after Mr. Saltmarsh does an analysis that
12 does separate the two items or since were you the person
13 who was thoughtful enough to impart these problems, if
14 you're comfortable that the items that only relate to the
15 FERC compliance are identifiable, maybe we can move
16 forward on those.

17 SENATOR PEACE: Mr. Chairman, I have three
18 issues. One on page 18, which I've already outlined.
19 Another is on page 27 appears to be an amendment to the
20 conflict of interest provision which concerns us, and the
21 final is on page 10, which changes the method appointing
22 the chairperson at PX from the Oversight Board to the PX
23 Board. So I'd like to know whether any of those issues
24 pertain to FERC compliance?

25 MR. SALTMARSH: Could you please repeat the cite

1 on the second item?

2 SENATOR PEACE: Page 27. These are -- this deals
3 with conflict of interest provisions.

4 ASSEMBLYMAN WRIGHT: There are a couple of
5 different page 27's and 18's. If you could, specify
6 which 27 and which 18.

7 CHAIRMAN KAHN: I think we're on the same page.

8 MR. ROZSA: Page 27, the very first section,
9 Article 7 records -- section -- it's one --

10 SENATOR PEACE: It's tab three in your binder and
11 Page 27 of the document. At the top of the page it reads
12 Article 7 records.

13 MR. SALTMARSH: Members of the Board, the first
14 item that was referenced regarding compensation, it is my
15 opinion that does not relate to a compliance issue with
16 state or federal law, that is it not an amendment being
17 made to conform to a settlement between the state and
18 federal government or a directive of the state or federal
19 government.

20 As to the conflict of interest amendment on Page
21 27, to the best of my knowledge that is also the case. I
22 can say with confidence it is not a conforming change
23 made for the purpose of conforming to any state
24 requirement. I am not aware of any directive from the
25 federal government to which this could be seen as a

1 conforming change.

2 SENATOR BOWEN: Can we stop? I have got a
3 different copy because it's different. It has other
4 material in it.

5 CHAIRMAN KAHN: Oh, sorry.

6 MR. SALTMARSH: The provision that I am looking
7 at, which, I believe is being referred to, is Article 7
8 records, section 2, sub-five, sub-six, as the two
9 sections that are being changed I believe. Am I correct?

10 SENATOR PEACE: Let's all get to two, then I can
11 walk you forward.

12 SENATOR BOWEN: We've got three sets of the
13 bylaws.

14 SENATOR PEACE: The document is Board of
15 Governors approval draft February 8th, 1999.

16 Okay. Now if you go forward to page 27, 27 would
17 be a left-hand page. At the top it says Article 7
18 Records, and if you move to the bottom of the page, you
19 see the strikes.

20 SENATOR BOWEN: No.

21 CHAIRMAN KAHN: Okay. We're on the same page.
22 Thank you, Senator.

23 SENATOR PEACE: And Counsel has indicated that
24 these were not required by FERC, and if they're not
25 required of FERC, for right now, I think we can defer the

1 debate of whether it's a good idea. With the exclusion
2 of those three issues, we can simply approve the balance
3 of the work product.

4 Page 10 is the next one. Page 10 goes forward
5 because it's another document. It's about this much
6 ahead. It's part of the Bylaws of the California Power
7 Exchange Corporation. Red line is this the document.
8 Page 10 of that document. It's the right-hand page. And
9 about two-thirds of the way down underneath -- the
10 governing board shall appoint in accordance with this
11 paragraph, and the amendment strike oversight and in
12 substitute governing so that old language that the
13 Oversight Board shall appoint a chairman, and this now
14 says the governing board shall appoint a chairman.

15 CHAIRMAN KAHN: Is that required?

16 SENATOR BOWEN: We're not with you yet. We'll
17 work on it yet.

18 CHAIRMAN KAHN: Mr. Saltmarsh, when is this
19 action required to be done by the EOB?

20 MR. SALTMARSH: California law provides that the
21 Oversight Board determines certain specified things about
22 the governance of the Independent System Operator and the
23 Power Exchange. California law now provides SB 96 that
24 the Oversight Board approves bylaw revisions with respect
25 to those items. Prior to the enactment of SB 96, it was

1 terms of the bylaw themselves that gave the Oversight
2 Board the authority to approve revisions related to the
3 subjects that the Oversight Board generally had approval
4 authority on. There is no specified requirement in law
5 for the bylaws themselves that says that the Oversight
6 Board would act on a bylaw amendment within a certain
7 period of time the -- to the extent that any of these
8 revisions, not necessarily the specific ones that have
9 been mentioned here as three issues of concern.

10 A MEMBER OF THE PANEL: Turn your mike on.

11 MR. SALTMARSH: Shows that it's on -- it's back
12 on now. To the extent that any revision being made to
13 the bylaws for the purpose of conforming with an order of
14 Federal Regulatory Commission, that body has specified
15 certain compliance date depending on which order they're
16 complying with. So in some cases, the California Power
17 Exchange has made FERC conforming changes that had a due
18 date of June 1st to the FERC. There is no date, and if
19 it requires state action, then the FERC is seeking that.
20 We don't --

21 SENATOR PEACE: Mr. Chairman -- I have no idea
22 what you're talking about.

23 MR. SALTMARSH: I'm sorry, Senator.

24 SENATOR PEACE: Let me ask you a question. When
25 we negotiated with FERC, the work product resulted in a

1 statute, SB 96. I can see nothing in SB 96, nor do I
2 recall any conversations with anyone at FERC that had to
3 do with taking away the Oversight Board's responsibility
4 to appoint the chair and giving it to a state holder
5 group. That means the PX. Now the reason why I can say
6 that with a great deal of confidence is that had that
7 conversation occurred, I would have vigorously opposed
8 it. Now, SB 96 was the document that implemented the
9 negotiated agreement with FERC. Is there any place in SB
10 96 that authorizes the Power Exchange to change it's
11 bylaws to abscond with the authority to appoint it's own
12 chair?

13 MR. SALTMARSH: Not without the concurrence of
14 the state.

15 CHAIRMAN KAHN: Senator Peace, one second. I
16 have no intention of voting on anything. The only
17 changes -- I think that the points you made are well
18 taken, and as to every change that you identified, we
19 need more staff work. It needs to be laid out, the pros
20 and cons, and we also need paperwork that people on the
21 dias can look at regarding cost. So the only question I
22 have is, are there separately identifiable minimum
23 requirement changes that we can confidently vote on that
24 are required to effectuate the settlement to get rid of
25 the lawsuit. If there are those and Mr. Rozsa is

1 confident that they are identifiable, we could proceed;
2 otherwise, we can't.

3 SENATOR PEACE: May I submit a motion, Mr.
4 Chairman.

5 CHAIRMAN KAHN: That would be great.

6 SENATOR PEACE: That might help. That perhaps
7 the voting members could consider a motion which would
8 incorporate the Board's approval of all bylaws changes
9 which are consistent with the FERC settlement and SB 96.
10 If it's consistent and called for in these documents so
11 that if in fact as SB 96 (inaudible) and there may some
12 legitimate issues, but then the Board will not have
13 including the position of voting for the change, though
14 we have the public document in front of the statute and
15 as long as all these things are covered and that work
16 product we know what we're (inaudible) on.

17 CHAIRMAN KAHN: Senator --

18 SENATOR BOWEN: Senator Peace, you are the
19 supreme being who made all of this stuff in the first
20 instance. What does your original legislation provide
21 about the appointment by the EOB of governing board
22 members and maybe SB 96 is not where we should be
23 looking. Perhaps we need to go back further to see what
24 the status is. I know I have the question in my mind
25 about whether some of these amendments, bylaw amendments

1 are inconsistent not just with SB 96 but with AB 1890 or
2 with other statutory --

3 SENATOR PEACE: Here's where the rub is. The
4 original bylaws were approved by the Oversight Board.
5 They were purposely not restrictive in terms of those
6 governing issues. We gave broad authority to the
7 Oversight Board. So you won't find a directive in the
8 legislation. We were specific not to make it a political
9 creature. It's a public corporation created by statute.
10 I think some of the board members have, at times, lost
11 track of the public corporation context of it. And the
12 creation of the Oversight Board was the only reason why
13 the legislature and the Governor agreed to have a
14 (inaudible) be picked by some other selection process
15 that would have had have persons like yourselves serving
16 on the personal PX Board. So when the bylaws were then
17 adopted in close negotiations, and the Oversight -- with
18 the Oversight Board, what I see happening here is in a
19 period of time in which the -- the, you know, the
20 combination of the FERC dispute and the vagrancies and
21 appointment here on the Oversight Board is there's
22 nothing short of an effort by the stake holders on the
23 Power Exchange board to take power away from the
24 Oversight Board and reserve it for itself. And I think
25 that's a public policy mistake with very significant

1 proportions.

2 We fought very hard with our friends at FERC in
3 order to preserve the integrity of the Oversight Board,
4 and I think we ultimately were successful in making our
5 case on merit as to why it was so important. And one of
6 the reasons why they ultimately changed their mind was
7 because of recognizing the fact that we had chosen a
8 state board and we had the danger of this. This is
9 something big. Both the PX and ISO could be a
10 sellers-run corporation. We didn't have a the idea of
11 the self-selection of a chair is in my mind's eye huge --

12 SENATOR BOWEN: Did you hear from the PUC?

13 SENATOR PEACE: It's a huge problem, and there is
14 no PUC here, so that's major. And so you are the PUC
15 here. Oversight Board is the only public eye in the --
16 on this process. So you won't find restrictive language
17 in 1890 or in 1960 that says the Oversight Board selects
18 the chair because it isn't necessary because we gave the
19 power to the Oversight Board to decide that. So what
20 needs to be seen here is that this would be the Oversight
21 Board giving up that authority to appoint the chair, and
22 clearly the Oversight Board has that power and that
23 authority. Absolutely the Oversight Board can do that,
24 but the I'm arguing that the Oversight Board would not
25 chose to do that.

1 CHAIRMAN KAHN: Senator Bowen, are you
2 comfortable with Senator Peace's formulation?

3 SENATOR BOWEN: Yeah. I think it makes a lot of
4 sense to do the things that are required to settle the
5 lawsuit. I think the question is implementation. Are we
6 ceratin enough to specify exactly what articles and
7 amendments we're talking about today, or would it be
8 better to spend a little time --

9 SENATOR PEACE: The alterative is to give it
10 thirty days.

11 SENATOR BOWEN: It may be better to let everyone
12 have a look.

13 MR. WILLISON: That was the Chairman's question.

14 CHAIRMAN KAHN: That's right. That was my
15 question.

16 MR. RASMUSSEN: Mr. Chairman, we indeed made
17 separate filings at the FERC, and we have these filings.
18 I'm certain we can bring those to the board at it's next
19 meeting.

20 SENATOR PEACE: Are these three items separate?

21 MR. RASMUSSEN: Compliance filed, as I recall,
22 they were.

23 SENATOR BOWEN: Can somebody do a nice little
24 chart that says here's what the FERC --

25 SENATOR PEACE: And does thirty days create a

1 problem for you?

2 MR. RASMUSSEN: No. It's substantially done. I
3 should note that under the initial bylaws there was
4 provision for compensation of the chair.

5 CHAIRMAN KAHN: We're going to talk about those
6 things.

7 MR. RASMUSSEN: Just to correct that, lest there
8 be any impression about that, and I should assure Senator
9 Bowen that all amendments to the bylaws, SB 96 and
10 otherwise, are certainly consistent with AB 1890.

11 SENATOR PEACE: So what you're doing is you're
12 talking the chair? The past chair chose not to do it,
13 and you're extending it so all board members can get
14 compensation?

15 MR. RASMUSSEN: The compensation was initially
16 provided -- I think you had a straight through language.

17 SENATOR PEACE: It means worse than I thought.
18 I'm glad you shared that up, Mr. Rasmussen. I don't want
19 to bog down.

20 CHAIRMAN KAHN: My question is, to you and to
21 anybody in the audience, is the world going to end if we
22 wait thirty days here?

23 Then I'd entertain a motion that we'd defer this
24 to thirty days.

25 MR. RASMUSSEN: I need to bring this to your

1 attention that we are conducting selection processes. We
2 will be complete at the Power Exchange for all selection
3 processes on our governing board on Monday. All seller
4 classes are now done, and we are starting to request the
5 end-user classes. That process is being done in
6 accordance with the bylaws that were submitted and
7 approved by FERC. I would hope that there won't be any
8 lengthy period of time before there was activity to
9 confirm that by this board indeed the bylaws processes
10 are specifically implied.

11 CHAIRMAN KAHN: I understand what you're saying.
12 On the other hand, Senator Peace and Senator Bowen's
13 points are well taken, and we have to be consider these
14 changes thoughtfully, and I think that you folks are
15 perfectly capable of determining the implications of your
16 going forward without us backing, and we're going to do
17 what's right here, and it sounds like what we think is
18 right is waiting.

19 ASSEMBLYMAN WRIGHT: Mr. Chairman?

20 CHAIRMAN KAHN: Yes.

21 ASSEMBLYMAN WRIGHT: It's a mixing of apples and
22 oranges. Those things that were relevant to the FERC
23 resolution are mixed with, I think, policy changes, and I
24 think that's where the confusion is. I think we would be
25 better served at least in voter interest if we look at

1 those things that were FERC performance issues as a
2 separate materials and then those things that were policy
3 changes that were staffed in on another side so that
4 we're go not trying to vote those two things at the same
5 time, so it might well be that the FERC compliance issues
6 would get one vote, and the other, another. I don't
7 think they would be mixed.

8 SENATOR PEACE: In the interest that we send the
9 signal we want to send to FERC, perhaps the members could
10 consider a motion that would indicate the board's
11 approval in concept of all FERC compliance rules changes
12 subject to a verification that separation of these issues
13 that have been combined here in this discussion today and
14 final vote will be taken in thirty days and indicate the
15 only reason for the date in order to confirm the
16 separation, and that way you will have made it very clear
17 to FERC that we're going to approve the compliance issues.

18 SENATOR BOWEN: That's a smart move.

19 CHAIRMAN KAHN: Mr. Willison?

20 MR. WILLISON I would make that motion to the
21 board basically approving a concept the amendments to the
22 articles 3, 4, and 5 of the Power Exchange bylaws as they
23 relate to FERC compliance.

24 CHAIRMAN KAHN: Second.

25 MR. JACOBS: May I make a comment before the vote

1 on that motion?

2 CHAIRMAN KAHN: Sure.

3 MR. JACOBS: Those bylaws are different in some
4 ways from the PX bylaws amendment. We also made many
5 changes that were not specifically required by SB 96 or
6 by FERC rules, but we've not begun our processes yet.
7 Holding off on non-FERC required changes would result in
8 our having to delay our election process for a minimum of
9 thirty days. You need to consider it.

10 CHAIRMAN KAHN: Well, we haven't got to you yet.
11 We're on the Power Exchange. Isn't that right?

12 MR. WILLISON: Right.

13 MR. JACOBS: Pardon me.

14 CHAIRMAN KAHN: Motion to second.

15 Is there any comment?

16 All in favor?

17 MR. WILLISON: Aye.

18 CHAIRMAN KAHN: Aye.

19 Mr. Saltmarsh, do you have that down? You want
20 me to repeat it? I just want to make sure you got it.

21 MR. SALTMARSH: I believe I do, Mr. Chairman.

22 CHAIRMAN KAHN: In light of the -- by the way,
23 Mr. Rozsa, thank you very much, and Senator Pease.

24 Number 4. Where does that lead us Mr. Saltmarsh?

25 MR. SALTMARSH: This brings us to Item No. 4,

1 which are pending nominations for appointment --
2 potential appointment to the Governing Board of the
3 California Power Exchange. Five names have been
4 submitted to the Electricity Oversight Board. One of
5 these is an existing member of the Governing Board,
6 Governor John Geesman, who, by vote of the Power Exchange
7 Governing Board, was recommended to assume the
8 chairpersonship of that board under the bylaws that have
9 been in effect as has been discussed in the last few
10 minutes.

11 The Electricity Oversight Board has retained the
12 actual authority to make effective the appointment of a
13 chair, so Mr. Geesman's name is submitted to you as a
14 nominee for appointment as the chair of the Power
15 Exchange Governing Board. Two members are put before in
16 classes that ultimately under the FERC settlement will be
17 subject to appointment or confirmation by the Electricity
18 Oversight Board but have been under the provisions in
19 place. To date, these are Miss Valerie Fong, affiliated
20 with PG&E in the class associated with private
21 distribution companies and Mr. Manuel Robledo in the City
22 of Pasadena to the publicly-owned distribution class.
23 These are both submitted as nominees for appointment to
24 the Board itself. And again, I just make the distinction
25 that under the SB 96 and the FERC settlement, those would

1 not be subject to confirmation after those bylaws
2 changes.

3 And there are two additional persons who have
4 been identified as possible appointments to the Oversight
5 Board to have an advisory capacity to the Power Exchange
6 Governing Board. One, Ms. Stacy Kusters associated with
7 Powerex Marketing, an entity associated with British
8 Columbia Power; and the second, Mr. Matt Davis with
9 Nevada Power Company.

10 CHAIRMAN KAHN: Mr. Saltmarsh, is there, in light
11 of the fact that we had anticipated different action on
12 number three, can you explain what the consequences of
13 deferring No. 4 would be?

14 MR. SALTMARSH: The practical consequences, as I
15 see them, are that Mr. Geesman is, in fact, a member of
16 the Power Exchange Governing Board today. Pending action
17 by the Oversight Board affirmatively or negatively, he
18 has been serving as the acting chair of the Governing
19 Board, and I presume that he would continue in that
20 capacity presiding over meetings in an interim capacity
21 until such time as the board chose to act.

22 Miss Fong and Mr. Robledo, as I understand it,
23 are attending meetings of the governing board but are not
24 voting, so they have not been confirmed, so each of these
25 classes would have one less voting member in them than

1 they would if a member of the board was confirmed.

2 MR. RASMUSSEN: Let me just state that, at the
3 last board meeting, Mr. Robledo and Miss Fong were
4 confirmed by our governing board, so under SB 96 that is
5 the last act I believe necessary to make them
6 full-fledged members of our governing board.

7 CHAIRMAN KAHN: So we really don't need to --

8 MR. RASMUSSEN: So an inaction on this agenda
9 item would simply mean that they are full-fledged members
10 of our Board.

11 CHAIRMAN KAHN: Okay. And Mr. Geesman -- the
12 direction of Mr. Saltmarsht was correct about that?

13 MR. RASMUSSEN: Well, once again, it goes back to
14 the Senator's comment concerning the whether SB 96 and
15 the settlement with FERC mandates that the chair
16 appointment be differently done. Of course, the FERC --
17 now in the bylaws before you that FERC approved -- has
18 approved the appointment of a chair by the governing
19 board as consistent with the California Corporations Code
20 for nonprofit corporations, and I say that because it's a
21 standard and fairly routine practice. But now we've a
22 situation where FERC has approved and accepted our bylaws
23 for filing, and that filing contained the authority and
24 the governing board to appoint the chair, and as Mr.
25 Saltmarsh mentioned at our last meeting. Mr. Geesman was

1 unanimously appointed by our board as the chair.

2 MR. WILLISON: And then you have some question as
3 to whether or not other members of the board would be
4 willing to serve with or without a retainer.

5 MR. RASMUSSEN: I don't have any question with
6 regard to that, at least in my mind as to whether they
7 would or would not be willing to so serve.

8 CHAIRMAN KAHN: Okay. Yes.

9 ASSEMBLYMAN WRIGHT: I'm unclear if the -- the
10 members or the nominations were made to your board and
11 they were confirmed at the board, and Mr. Saltmarsh
12 believes that they needed to be confirmed by this board,
13 did we resolve that? I mean the two of you said
14 something different, and I'm not sure there was a
15 consensus between the two of you.

16 SENATOR PEACE: The appointment under the
17 agreement with FERC of certain classes are made without
18 Oversight Board approval and these classes include these
19 that are made without Oversight Board approval, so the
20 Oversight Board is barred.

21 CHAIRMAN KAHN: The Assemblyman was talking about
22 the --

23 SENATOR PEACE: I'm going to have a much more
24 interesting meeting with the Chairman of ADX next week.
25 We're going to get a lot friendlier is -- if what you're

1 telling me is the PX plans to and very cagily included
2 these provisions in the filings in Washington going to
3 vote beyond and outside of the negations for those
4 changes that were required for FERC approval in order to
5 get ahold of the power of the chair, which is what I'm
6 hearing you say. They're very slick. I'm impressed.

7 CHAIRMAN KAHN: Any other comment public or
8 otherwise on Item No. 4?

9 ASSEMBLYMAN WRIGHT: I didn't get -- Mr.
10 Saltmarsh, is your understanding consistent with this
11 gentlemen's?

12 MR. SALTMARSH: I will try to reconcile them for
13 you. I very much agree what was said by Mr. Rasmussen
14 and Senator Peace that explicit changes in California law
15 remove the statutory authority of the Oversight Board to
16 confirm what we in shorthand we've been calling the
17 sellers classes of which these two individuals are both
18 representatives. The only area in which there is any
19 question is that the bylaws of the corporation themselves
20 as they were ineffect previously specified that those
21 appointments were confirmed by the Electricity Oversight
22 Board. Now, FERC has approved modified bylaws that say
23 that they are not confirmed by the Oversight Board. The
24 Oversight Board has not yet acted on those same bylaw
25 provisions which we've been talking about, so it is my

1 opinion that we could have some level of a shadow over
2 those as long as there was a question, but I do agree
3 going forward and under the resolution that was just
4 approached in concept. The Oversight Board would not in
5 be acting on those so --

6 MR. WILLISON: So there might be some of these
7 recommendations that we would be inclined to act on and
8 others that we might we might be able to confirm the
9 action of the board?

10 MR. SALTMARSH: Based on the action that was just
11 taken confirming in concept approving in concept the SB
12 96 FERC settlement confirming bylaws, it would appear
13 appropriate that the Oversight Board decline any action
14 in relation to those two seller class members because
15 they either are now or will very shortly, with the effect
16 of that Oversight Board approval of the bylaws, be
17 perfected in their appointment without Oversight Board
18 action.

19 There are two nomination that were made to the
20 Oversight Board for advisory members. Those members have
21 separately been given an advisory status by the Power
22 Exchange Board itself. The Oversight Board has the
23 authority to mandate that the Power Exchange seat them as
24 advisors. Since they've already voluntarily done so
25 there's no practical effect of a decision to act or not

1 act at this time on those and that leaves the only one
2 that is open for debate or discussion the action in
3 relation to Mr. Geesman.

4 ASSEMBLYMAN WRIGHT: It would seem to be to be a
5 cleaner -- it would seem to be a more efficient way or a
6 cleaner way of doing it is rather than say that the board
7 was inactive on Item 4, that Item 4 was withdrawn because
8 the previous motion made it moot. I wouldn't want it to
9 appear that there was an inaction when, in fact, the
10 action of accepting the bylaws in concept made the
11 adoption of Item 4 moot. It gets us to the same point,
12 but an inaction sounds like the board failed to act, and
13 that isn't quite accurate because by adopting the bylaws
14 in concept and by adopting those bylaws eliminated the
15 need to do that.

16 MR. SALTMARSH: I appreciate the distinction, and
17 the board certainly has the power, if either the ISO or
18 the PX wishes to withdraw that, you are welcome to do so.
19 In any case, the board could -- alternative inaction
20 could make affirmative finding that action was not
21 necessary because of it's prior resolution.

22 CHAIRMAN KAHN: Unfortunately, it's not quite as
23 simple as all that. As to Ms. Fong and Mr. Robledo and
24 Mr. Davis, it seems clear that Assemblyman Wright's
25 suggestion is well taken and those should be withdrawn

1 because no action is necessary. I would suggest that we
2 do that. Maybe we could handle those three which are not
3 conversional.

4 MR. SALTMARSH: I agree with you as it relates to
5 Ms. Fong and Mr. Robledo. Mr. Davis, while associated
6 with a seller-type entity, Nevada Power Company has been
7 requested to be appointed by the Oversight Board as an
8 advisory representative. The Oversight Board does still,
9 under all of the settlement provisions, have the
10 authority, if it wishes, to make an appointment of an
11 advisory member from what whatever entity. It is also
12 certainly within the purview of the Oversight Board to
13 decide that the public interest of appointing advisory
14 members by the state really only relates to other types
15 of entities and that it would be up to the Nevada Power
16 Company, for instance itself to go to the Governing Board
17 and seek an advisory status.

18 CHAIRMAN KAHN: Okay. So we decided then we have
19 No. 2 and No. 3 that you're comfortable with withdrawal?

20 Do you have any objection from that?

21 Do you have any objection from the Power
22 Exchange?

23 MR. RASMUSSEN: As to 2 and 3?

24 CHAIRMAN KAHN: Right.

25 MR. RASMUSSEN: No, no.

1 CHAIRMAN KAHN: I just want to make certain that
2 in no way, shape or form are we doing anything that says
3 that we disprove of Ms. Fong or Mr. Robledo. Okay.

4 Now we're left with Nos. 1, 4, and 5. As to No.
5 1, it sounds like we have a controversy as to authority,
6 and it seems to me we ought to not take any action.
7 That's my sense of it.

8 Mr. Rozsa, do you agree?

9 MR. ROZSA: (No audible response.)

10 CHAIRMAN KAHN: Mr. Willison?

11 MR. WILLISON: In that case I would move to defer
12 the action.

13 CHAIRMAN KAHN: Second.

14 Any discussion?

15 I'll just make this comment. In no way, shape or
16 form, does this reflect on Mr. Geesman, who I'm sure
17 would be a fine participant and doing a good job, but we
18 are talking about a matter of principle here. We're
19 going to defer this.

20 All in favor?

21 MR. WILLISON: Aye.

22 CHAIRMAN KAHN: Aye.

23 Okay. Now, as to No. 4, Ms. Stacey Kusters, is
24 that how you pronounce it?

25 MR. RASMUSSEN: Stacey Kusters.

1 CHAIRMAN KAHN: As to No. 4, I have a question.

2 And that is, Stacey Kusters is also nominated to sit on
3 the ISO Board, correct, advisory board.

4 MR. SALTMARSH: Yes, in the same capacity on both
5 boards.

6 CHAIRMAN KAHN: I'm not comfortable myself in
7 that I understood historically the issue of people
8 sitting on both boards was discussed by a prior board,
9 and prior to the time that I'm comfortable moving forward
10 with this concept. I'd like to see the staff work and
11 the resolutions, and the history of that. Until that,
12 I'm not prepared to say one way or the other whether it's
13 proper to sit on both.

14 Mr. Willison, you want to respond?

15 MR. WILLISON: No. I have not heard any
16 discussion on that issue.

17 MR. RASMUSSEN: Mr. Chairman?

18 CHAIRMAN KAHN: Yes.

19 MR. RASMUSSEN: So that the board will be fully
20 advised in terms of this, Once again, under the FERC
21 approved bylaws of the California Power Exchange, the
22 provision now is that we have advisory representatives
23 that the board itself could appoint as -- and we split
24 off those types of advisory representatives from advisory
25 representatives that the state will continue to appoint

1 per the original design.

2 The board, at it's last meeting, acted to seat
3 Ms. Kusters and Mr. Davis as CalPX advisory
4 representatives in their own right. I hope I'm making
5 that clear. So in terms of their status serving as
6 advisory representatives on the California Power Exchange
7 Board, they currently by board action have the status of
8 advisory representatives -- advisory board
9 representatives to the board itself.

10 CHAIRMAN KAHN: Well --

11 MR. RASMUSSEN: Is that clear?

12 CHAIRMAN KAHN: If you're trying to say that we
13 our action we're not changing anything, all that we have
14 spotted an issue that we'd like too pursue, and we
15 understand you're going to go about your business. And
16 all we're asked here to do is comment upon this
17 particular situation, and our conclusion is that we'd
18 like to learn more since we're new at this -- about the
19 notion of somebody sitting on or with or on both boards.
20 So I think we're going to figure that out. What we do
21 about it? Who knows. Do you have a motion?

22 MR. WILLISON: It's a question on whether or not
23 we need to actually move to decline or to act.

24 CHAIRMAN KAHN: Do we need to do anything here?

25 MR. SALTMARSH: You could simply stip the item,

1 and it would have the effect of no action by the board.
2 If you wish to link your non-action at this time to
3 request for more material to come back or something
4 similar in the record, then it would probably be
5 appropriate to make a motion that effect.

6 SENATOR PEACE: Motion I would recommend is that
7 we could just take no action on these specific items,
8 and that the next meeting agenda item be placed to
9 discuss the appropriateness of dual membership, so board
10 members and/or advisors -- and it's very perceptive that
11 you zeroed in on this. This was a very contentious issue
12 in the past, ironically an issue which the sellers
13 prevailed and demanding the ISO and the PX be separated.
14 And here we it is again, a seller serving on both boards.
15 Both -- also, we, I think, reach out behind California
16 borders and make sure that you have representation and
17 showing that it's both their attempting to actually reach
18 -- so you have some significant policy items here, and I
19 think it's a policy discussion very much worth having.

20 MR. WILLISON: Now, the question is whether or
21 not that part of the FERC-approved bylaws is in effect
22 confirmed by this board; and, if it is, then it would
23 seem that it would be granting the Power Exchange Board
24 the ability to do that no matter what.

25 SENATOR PEACE: And that's where, you know, in

1 the wording of the resolution, your motion, that I'd
2 suggest that you are careful to articulate it that way,
3 approval and principle subject to the verification of
4 what items were in fact consistent with FERC compliance
5 and SB 96, so that the PX is not unilaterally deciding
6 what it is FERC compliance and what is not just by
7 gestures.

8 CHAIRMAN KAHN: Mr. Heath?

9 MR. HEATH: Thank you, Mr. Chairman, members.
10 This is obviously a sensitive issue. Perhaps it should
11 be just slightly broadened to go just beyond the dual
12 membership issue and perhaps it would be helpful to the
13 board and its members if we had perhaps a broader
14 discussion of the roles of the advisory representatives
15 because I think it's an important one for the board to
16 understand what that responsibility means, who's
17 currently in what and what positions are currently there,
18 how were they placed their. I would like to hear
19 concurrence to broaden that a little bit on the advisory
20 representatives.

21 MR. WILLISON: I would adopt Senator Peace's view
22 and move then that we pass on any action at this point
23 and make it an agenda item for discussion.

24 CHAIRMAN KAHN: And accept Mr. Heath's friendly
25 amendment to expand the inquiry.

1 MR. WILLISON: Yes.

2 CHAIRMAN KAHN: Second that motion.

3 Any discussion?

4 MR. RASMUSSEN: The point I had to raise is

5 outside that discussion.

6 CHAIRMAN KAHN: Okay.

7 MR. RASMUSSEN: But I would like to make it.

8 CHAIRMAN KAHN: We'll vote, and then you can make

9 it.

10 All in favor?

11 MR. WILLISON: Aye.

12 CHAIRMAN KAHN: Aye.

13 Opposed? None. So that passes 2 to nothing.

14 And again -- Mr. Saltmarsh, do you think you can keep

15 track of all of this?

16 MR. SALTMARSH: I think I've got it. To the

17 extent I don't, I can read the transcript.

18 CHAIRMAN KAHN: Okay. And finally we have Mr.

19 Davis, and he is, I guess, in just the plain old

20 declination of both, right?

21 MR. SALTMARSH: He does not have the dual status

22 issues. It is simply a question of whether the board

23 would act to appoint on behalf of state this individual

24 from Nevada Power.

25 MR. WILLISON: I'm moving that the board decline

1 to act on the appointment of Mr. Matt Davis at this time.

2 CHAIRMAN KAHN: And I'd second.

3 Any discussion?

4 I want to make the record clear this has no
5 reflection on, no reflection whatsoever on Mr. Davis.

6 All in favor?

7 MR. WILLISON: Aye.

8 CHAIRMAN KAHN: Aye.

9 No opposition. It passes two to nothing.

10 Okay. We're on Item No. 5. And where are we?
11 What is that? That's -- oh, I'm sorry.

12 Mr. Rasmussen, do you have a comment?

13 MR. RASMUSSEN: I did have a comment. As we're
14 going along, I think it's important to bear in mind and
15 understand that the FERC has taken the position that all
16 PX bylaw amendments must be filed and accepted for filing
17 by the FERC -- of any type whether they're SB 96
18 compliance or any type whatsoever, and FERC's position is
19 that these constitute a firm condition of service subject
20 to their jurisdiction under the Federal Power Act. I
21 wanted to make certain the board had that clarification.

22 SENATOR PEACE: This is going to get ugly because
23 you all have obviously chosen to operate like a private
24 company in the last few minutes which is precisely what
25 the concern of the Governor's office -- both Governors,

1 the governor that presided over the initiation of the act
2 and the incoming governor and the legislature and is
3 precisely why Senator Wright -- I keep trying to promote
4 you -- and his staff have spent a great deal of time in
5 Washington working with FERC commissioners, and we
6 negotiated a settlement with FERC.

7 Now, if you went out and gave away more through
8 your filing is 100 percent of that negotiated settlement
9 was embodied in SB 96. You were not a party to that
10 discussion. If you -- and I'm saying you, I don't mean
11 you personally, but you get the benefits of the being the
12 supposed person. If the PX moved out in a rogue fashion
13 and chose to pursue it's private -- what I would identify
14 as economic interest given the fact that the board is
15 dominated by stake holders, in order to get control over
16 the Power Exchange and as a consequence give more power
17 to sellers in the system to the detriment of the
18 consumer, you may well find yourself in a motion where
19 you'll be filing all the bylaws that you may want to file
20 at FERC that you want, but you won't exist anymore. We
21 never contested the obligation for you to file your
22 bylaws at FERC. We agree 100 percent, but FERC -- the
23 Power Exchange is a public corporation, not a private
24 corporation.

25 CHAIRMAN KAHN: We've been going for an hour and

1 a half, and the court reporter needs a break, and I need
2 to go ask the Governor what he's got me into. And so --

3 SENATOR PEACE: It could be worse. You could be
4 a judge.

5 CHAIRMAN KAHN: Then I'd know what to do. We'll
6 take a 10-minute break. Thank you.

7 (Recess.)

8 CHAIRMAN KAHN: Okay. We're going to get
9 started. Okay. We've item number five. And I believe
10 Mr. Jacobs, somewhere in the fray you were trying to
11 explain to us that there was a difference?

12 MR. JACOBS: Yes, I did. I was. First, I'd like
13 to point out that we were in a different position with
14 the Power Exchange. We made our filing at a later date
15 because our bylaws did require certain stake holder
16 approval of some of these amendments. The filing
17 submitted has not yet been approved, and I want to make
18 the point pretty clearly that the filing with FERC was
19 made clearly subject to approval of the Oversight Board.
20 On any of the amendments we made with regard to SB 96 or
21 not, so our FERC filing is structured a little bit
22 differently from the PX's.

23 I also wanted to point out one of things that we
24 tried to do when we amended our bylaws -- there is a mix
25 of SB-96-required and non-SB-96-required bylaws in the

1 package that we submitted to you all, and in our case
2 it's even a little more complicated because one of the
3 things that we did was we totally revamped the procedures
4 for electing members of our board. The original bylaws
5 had been set up with 13 classes -- or 11 different,
6 distinctly different sets of the procedures for how to
7 come up with the final nominees to be submitted to the
8 Oversight Board. One thing that my board wished to do to
9 was simplify that process a bit, and so we took it from
10 11 different steps of procedures down to 4. Because of
11 that, failure to act on our bylaw amendments or some
12 subset of the our bylaw amendments would require that we
13 delay our elections further until you had a chance to
14 reconsider those. Like I said, we held off on holding
15 any of our elections until presenting the bylaw
16 amendments to the board. Looking at our bylaws and
17 discussing with it with my group, we don't have right now
18 for you a listing exactly which ones are required by SB
19 96 and which ones were not, you can point out right off
20 the bat that in fact we had a very similar position with
21 regard to change in authority to elect the chair on the
22 board to that of the PX . That's a provision Oversight
23 Board staff starting back in January of 1999 and again in
24 August of 1999 and in January of this year, and we have
25 had discussions with staff at least. I don't want there

1 to be an impression that anyone's been trying to hide the
2 ball, and were posted on our web site now since January
3 of 1999, but that is clearly one of the policy decisions
4 that needs to be made by the Oversight Board on how to
5 elect my Board has. FERC filing does not effect that
6 fact.

7 The other issue that I'm aware of that there's
8 some concern about is the policy on staggered terms that
9 we've proposed for how to take our board which, right
10 now, everyone's elected the same time and to be able to
11 get the term staggered so that only a third of the board
12 members come up each year.

13 What I'd like to suggest, perhaps is if the board
14 can decide, we can take those two issues down off of the
15 table, and, if there are other particular concerns that
16 the board has with regard to our non-SB-96 amendments to
17 pull those off and perhaps consider all of the other
18 changes, which, as I said, some of them are so closely
19 intertwined with the SB 96 changes, unless we had some
20 sort of action in that regard, we would need to continue
21 holding our elections.

22 SENATOR PEACE: Unlike the Power Exchange, we
23 were aware of the ISO Board's desire to take the
24 appointment power, and they in turn were also aware of
25 our opposition do to that, and so, yeah, that's also been

1 out there. We also knew -- they also were very careful
2 in their filing to delineate where the differences were
3 and that they were all subject to final approval of the
4 Oversight Board. These provisions that, in the filing
5 that are before us in the ISO filing other than I am
6 personally okay with the change. The members may want to
7 take time to look at it as I have. Personally, my
8 personal -- with the exception of the appointment of the
9 chair issue, I believe that the ISO filing is it's
10 entirely appropriate for approval, and the board may want
11 to also take thirty days to look at the election
12 staggering, but it is, as has been described by the ISO
13 and make certain in terms of not having told the term.
14 That's a summary of the history, and sometimes we can
15 take it over the last year.

16 CHAIRMAN KAHN: Thank you. Mr. Rozsa, do you
17 have anything to add on this?

18 MR. ROZSA: I have spoken with both these
19 gentlemen about the staggered terms, and they've asked
20 for time to talk about it.

21 CHAIRMAN KAHN: Okay. Are there any other public
22 comments?

23 Mr. Willison, what is your pleasure?

24 MR. WILLISON: It would be appropriate for us to
25 move approval of the amendments that the governing board

1 of the ISO has approved relating to Articles 3, 4, and 5
2 that are related to FERC compliance attendant to SB 96,
3 but only those items, and defer the other items for
4 review at the next meeting.

5 CHAIRMAN KAHN: I'll second that.

6 Is there any discussion?

7 Yes.

8 MR. JACOBS: I'm sorry. I just want to make sure
9 that the board understands that because of the way that
10 the provisions of our bylaws have been amended, that
11 would result with us not being able to move forward with
12 our elections, but if we could re-approach you next month
13 with that listing, but I ask you to consider Senator
14 Peace's comment and perhaps consider adoption of our
15 bylaws amendment other than in relation to the election
16 of the chair.

17 CHAIRMAN KAHN: Mr. Jacobs, let me tell you my
18 view of that. We may cause you some dislocation for
19 which I apologize, but I don't think it's appropriate for
20 me to vote on something that I don't understand the
21 issues, and it was complicated enough to engage Senator
22 Peace in analysis. I think it's worthy of us to review
23 what he analyzed. I apologize for the dislocation, but I
24 want to think about it before I vote.

25 All in favor?

1 MR. WILLISON: Aye.

2 CHAIRMAN KAHN: Aye.

3 No opposition. Two to nothing, it passes.

4 Number 6.

5 MR. SALTMARSH: Mr. Chairman, Item No. 6 is the
6 nomination of two individuals who were suggested for
7 state appointed advisory representative status to the ISO
8 Governing Board. These individuals are Ms. Stacey
9 Kusters, who was already discussed somewhat in the
10 similar item, and Mr. Timothy Hay, associated with
11 interests in Nevada. And I think that all of the other
12 discussions relates to advisory memberships would apply.

13 CHAIRMAN KAHN: Mr. Jacobs, when you're through
14 -- if you have more to add -- I'm sorry. I didn't mean
15 to interrupt. Okay.

16 MR. WILLISON: Can I ask then, Mr. Saltmarsh, in
17 that case, rather than declining to confirm or appoint,
18 we basically ought to defer these recommendations until
19 after we resolve the authorities bylaws.

20 MR. SALTMARSH: That would be in conformance with
21 the action that you took with respect to appointed
22 advisory representatives under the Power Exchange.

23 MR. WILLISON: Then, Mr. Chairman, I'd move that
24 we act to defer the appointment of these two.

25 CHAIRMAN KAHN: Second.

1 Any discussion?

2 The only two comments I'll make is, again, I want
3 to make absolutely clear this is no reflection at all on
4 these two individuals; and, second, as to Miss
5 Kusters's -- the problem with two boards services once
6 more.

7 All in favor?

8 MR. WILLISON: Aye.

9 CHAIRMAN KAHN: Aye.

10 No opposition. Passed two to nothing.

11 Number seven. Have we disposed of No. 7, or is
12 this something different? Okay.

13 Mr. Saltmarsh, do we have anything further to do
14 with No. 7?

15 MR. SALTMARSH: You clearly disposed of Item No.
16 8 under the ISO dealing with staggering of terms. I
17 believe you did, as to No. 7, although you did it within
18 the context of being the overall ISO bylaws, so I might
19 ask you to just reiterate clearly that it is about both
20 corporations, the staggered term, that those are being
21 deferred.

22 CHAIRMAN KAHN: Is that your understanding, Mr.
23 Willison?

24 MR. WILLISON: Yes.

25 CHAIRMAN KAHN: That's my understanding, so

1 confirmed. Okay.

2 Mr. Rasmussen? Yes.

3 MR. RASMUSSEN: I did mention that our board
4 processes will be complete, that our governors do have an
5 impression about the length of their individual terms,
6 and there is some subject to change now, and we will be
7 looking at this and working with Senator Peace's office
8 and hopefully bringing back something very near term so
9 that we can advise our governors designate what the
10 results are, and they can know for sure what the terms
11 are.

12 MR. WILLISON: You've already gone through the
13 lottery process with the individuals?

14 MR. RASMUSSEN: Essentially, yes. The person
15 getting the most votes is given the longer term, as the
16 process is worked itself through, though we've had ties
17 and in those cases we've had two, individuals or three --
18 two individuals actually to get together to work it out
19 between themselves and see what works for them. But we
20 are very much in the middle of the entire processes
21 right now, we should be in a position to report to you
22 results at your March meeting, and I hope we can bring
23 back a resolution at the March meeting and get this
24 squared away.

25 CHAIRMAN KAHN: Thank you both for your patience

1 and indulgence in our learning and trying to get our act
2 together. I think the items which are complete. We're
3 going to go on now to Item No. 9. And just for your
4 information in light of the length of time this has taken
5 to go through the first eight, we're probably not going
6 to break for lunch. We're going to take a couple of
7 breaks. We're going to work through to try to cover as
8 much of the territory as we can. Some of us have planes to
9 catch this afternoon.

10 Number nine?

11 MR. SALTMARSH: Mr. Chairman, I am going to
12 recommend that this will probably be an item for deferred
13 consideration of the board with a little bit of staff
14 briefing at the moment. At the time that this was
15 suggested that it might be an item the board should
16 commence consideration of now or in the near future, this
17 followed some discussions with some staff of the Federal
18 Energy Regulatory Commission who had one interpretation
19 of when the time line would trigger. Since then, it
20 appears the overall FERC thinks otherwise.

21 When the California governance structure was
22 approved by FERC, it was approved subject to FERC's
23 intent to conduct a review of how well the California
24 State Governance structure was working after three --
25 initially it said after a defined period of time to be

1 specified. That was specified as three years. Three
2 years from what date can be interpreted different ways
3 depending on how the several relevant FERC orders are
4 rigged together, and it appears that it was three years
5 from the adoption, the original adoption of bylaws by the
6 Independent System Operator at the Power Exchange, which
7 would be May of 1997; therefore, further review would be
8 due around May of 2000. Now, it looks like they're
9 talking about three years from the opening of the
10 California market, which puts it into 2001, so this item
11 of the federal government policy is off in the future and
12 that being the case, we suggest its not a item that needs
13 consideration.

14 CHAIRMAN KAHN: Mr. Rozsa, do you want to make a
15 comment, or are you comfortable with the idea of the
16 deferring for the moment?

17 SENATOR PEACE: I'm having some problem with what
18 the term knowledge of open docket means in the context of
19 an own -- I fear that it may imply that staff may be
20 getting a very wrong impression of what the legislative
21 mandate of the Oversight Board, so this is not the
22 energy --

23 (Transcription note: The preceding colloquy of
24 Senator Peace was unclear due to a microphone problem,
25 and therefore is not a verbatim record.)

1 MR. SALTMARSH: I would like to try to afford
2 some reassurance on that to the extent that there are
3 several items here that has been discussed with the
4 Chairman, and that there has been some reflection over
5 what the use of the terminology of the docket might refer
6 to. It was simply meant to reflect an intention to
7 create a defined subset of the board's public record,
8 mostly related to the fact that we have a regular series
9 of requests for public documents in which say I would
10 like to get all materials that the Board has created and
11 all that is submitted to the board and consideration of
12 this subject or that subject, and so it was suggested
13 that there might be something not only done as a record
14 keeping devise within the board for it's own use, but if
15 it could be designated somehow it would allow anyone who
16 was going to put something in to note it that way.
17 There's no great formality that was intended to be
18 associated with it, and because it's caught people's
19 attention, it's probably better to proceed under some
20 other terminology.

21 CHAIRMAN KAHN: Senator, I think your point is
22 well taken, and it's one that I take responsibility for
23 not catching before, but I did catch it yesterday, and
24 we're not opening dockets around here. We're an
25 Oversight Board, and we're going to -- I think that the

1 people at the Oversight Board have worked wonderfully in
2 the absence of a board to work with them in the last year
3 and half they've been struggling without any management
4 guidance to speak of. They now have it, and we will be
5 reviewing the way we do business, but I can assure you
6 that we'll be doing it consistent with our statutory
7 obligations and limitations, and I'd be very surprised to
8 hear these terms again.

9 Any further comments, Mr. Willison, on No. 1?

10 MR. WILLISON: No.

11 CHAIRMAN KAHN: Okay. Then we'll accept your
12 recommendation, Mr. Saltmarsh, and go to No. 10.

13 Senator Bowen, we made way to No. 10, deferring
14 No. 9 and disabusing ourselves of the notion that we open
15 dockets, and now we're at No. 10.

16 Mr. Saltmarsh?

17 MR. SALTMARSH: I seem to find myself as the
18 staff introducer on quite a few items today. This item
19 is teed up in part in relation to what's been mentioned
20 that there has been a lack of a meeting quorum of the
21 Board for some period of time. During the period when
22 the Oversight Board was last meeting regularly, the ISO
23 was in the early stage of developing a process for
24 conducting electric transmission grid planning for the
25 major portion of the state of California. There was

1 active discussion between the members of the Oversight
2 Board at that time, and the management of the Independent
3 System Operator about the Independent System Operator's
4 thoughts on how good planning would proceed. There was
5 some clear regulation stated by the Oversight Board that
6 the Oversight Board thought this planning was a key
7 element of achieving and ensuring the liability for the
8 state. The Oversight Board suggested that once the ISO
9 had developing the process, the Oversight Board was
10 interested in looking at the process that the ISO had
11 developed and concurrently the ISO suggested that it was
12 interested in discussing with the Oversight Board what
13 level of interaction on transaction planning between the
14 ISO and the Oversight Board would be required in order to
15 allow the Oversight Board confidence that this
16 reliability activity was being met in a diligent way. We
17 now have the benefit of the meeting member of the
18 Oversight Board and the meeting membership of the
19 Oversight Board. It happens at the same time that the
20 Independent System Operator has completed development of
21 the major elements of its grade planning and products
22 it's first of who would be grid plans. And this item is
23 on the agenda, again with the unfortunate use of the term
24 docket, to allow the Oversight Board to begin it's
25 discussion with the Independent System Operator how the

1 EOB would like to interact on the subject of grid
2 planning, and the ISO and the Oversight Board to ensure
3 that it's being handle properly.

4 MR. WILLISON: Well, Mr. Saltmarsh, are the ISO's
5 meetings and numerations on this issue -- are those
6 public record?

7 MR. SALTMARSH: The ISO's meetings are generally
8 conducted in public session. The ISO also conducts
9 certain portions of meetings in closed session. It is my
10 recollection, but I would need confirmation, that some
11 decisions and discussions by the ISO that have related to
12 the adoption of it's grid plan have occurred in open
13 session, and some have occurred in closed session.
14 Certainly, significant elements of the planning process
15 are publicly available documents, and the grid plan
16 itself is other elements of the what immediate issues are
17 considered to be somewhat sensitive and are given
18 proprietary status and indeed the availability of
19 observation of those documents by the Oversight Board
20 have been identified as subject to some type of assurance
21 that confidentiality need to be.

22 SENATOR PEACE: The ISO has adopted rules that
23 are interpreted that they have a slightly shorter lead
24 time for publication, which they justified because of the
25 use of the internet for publication. Other than that,

1 they operate under a adopted set of rules that are almost
2 descriptive of the shorter -- (Senator Peace asked to
3 turn his microphone on and repeats his previous
4 statement) The ISO operates under several rules that
5 they adopted themselves that are almost identical to
6 the -- the specific with the exception that they have a
7 shorter publishing time to which state they thought they
8 needed because sometimes they have to respond to real
9 world events, but they felt they could accommodate in
10 terms of publishing dockets on the internet.

11 CHAIRMAN KAHN: Is there a representative of the
12 ISO that wishes to make a comment about this?

13 Mr. Winter, welcome. Why don't you introduce
14 yourself.

15 MR. WINTER: I'm Terry Winter, CEO of the ISO, I
16 guess, that what was not said then what was said because
17 it would leave one with the impression that we have gone
18 about the planning process in secret. I think anyone
19 involved with that understands that our plan involved
20 the development of a five-year program that is open to
21 all. We've had several meetings in numerous areas, and I
22 notice the next item is San Diego, San Diego, in
23 particular, but also San Francisco and other areas. All
24 of these meetings have been open.

25 Each of the utilities submits a five-year plan to

1 us. We review each and every project for lead times,
2 reliability, constraints, whether it fits into the
3 overall grid in a way that's acceptable, and also for the
4 whole western United States review of those plans. In
5 that process, one of the things that we have been trying
6 do is determine if, in fact, there is it some way to
7 compete generation verses transmission, and in those rare
8 occasions where there was cost data stored with a
9 transmission project that would tend to compromise the
10 true competition between generation transmission, we had
11 very few I can only thing of one, but I'm getting rather
12 old, so I may have forgotten some of them meetings in
13 which they were approved in a closed session because of
14 the cost, but all of the particulars of the line, where
15 it was going, what it was solving, it's justification,
16 all of that was done in open session.

17 CHAIRMAN KAHN: Thank you. Do you have any
18 questions or comments about this item?

19 Mr. Rozsa?

20 SENATOR BOWEN: I had one again.

21 CHAIRMAN KAHN: Yes, Senator Bowen.

22 SENATOR BOWEN: There are often references to
23 staff general discussions, for example between the
24 members of the EOB and the management of the ISO, and I
25 think when we're writing about who's meeting with whom,

1 it's very important to distiguish between the meetings
2 that occurred between staff EOB and members of the EOB.
3 I seriously doubt whether there were discussions with the
4 members because there weren't any.

5 CHAIRMAN KAHN: I think that's a point well
6 taken.

7 MR. SALTMARSH: It is a point well taken, Senator
8 Bowen. If I am correctly interpreting the section you're
9 reading from, it actually is intended to refer to
10 discussions that were within meetings of the Oversight
11 Board between then Chairman Anderson and Mr. Trainan, the
12 former CEO, but I think Mr. Winter in his capacity was
13 involved in them as well anticipating the Independent
14 System Operators development of a grid planning offers
15 that the time line on that was approximately a year and a
16 half to a year and three quarters.

17 SENATOR BOWEN: All right. Just as we go
18 forward, I think it's really important and will be
19 helpful to us to know whether these kinds of issues were
20 actually discussed with members of the EOB. I presume it
21 is only going to happen here because of the problem.

22 CHAIRMAN KAHN: Well, there certainly won't be
23 any meeting with Mr. Willison and I unless we are facing
24 in this direction.

25 SENATOR BOWEN: So I think it's confusing.

1 CHAIRMAN KAHN: Well, I think that's right, and I
2 think that's a fair comment, and we just need to do
3 better on that. Okay. Failing --

4 Mr. Winter, thank you very much.

5 Failing any other comments, we'll move to Item
6 No. 11, and I understand that that's going to be moot.

7 MR. SALTMARSH: Although I'm not identified as
8 the presenter, I can tell you short circuit that the
9 schedule here it is indeed. It was put on the agenda at
10 a time when it looks like there might be a difference
11 between San Diego Gas & Electric and the Independent
12 System Operator on whether or not certain projects should
13 be recognized as needing expedited treatment. There is
14 no difference of the interpretation at this time, and so
15 even though back several months ago, a representative of
16 San Diego Gas & Electric had asked the Oversight Board to
17 sort of the track this and see how it went, there's
18 nothing to look at, at the moment.

19 CHAIRMAN KAHN: Okay.

20 MR. WILLISON: Can I just ask if the items in
21 question were accelerated?

22 MR. SALTMARSH: Yes. In fact, all of the items
23 now are getting expedited treatment, and both San Diego
24 Gas & Electric and the ISO confirm that, with the
25 exception of one fairly large upgrade, the Rainbow Valley

1 Extension, which is mutually agreed is important for a
2 longer term stay.

3 MR. WILLISON: Okay.

4 CHAIRMAN KAHN: Any comment by anyone here?

5 SENATOR PEACE: Mr. Chairman, I just want to make
6 sure -- it would appear and I haven't seen a letter that
7 your item makes reference to. I don't know what was said
8 or what SDE was requesting, but I think staff should
9 again be careful not to allow the Oversight Board to be
10 used as a means of appeal -- with ISO and PX decisions it
11 would be appropriate for this Board to assist when
12 there's some controversy to come to terms to have a
13 policy that their looking at what's going on there, but
14 we do not, and I think FERC would frown upon it that the
15 board actually holding a hearing on a specific ISO
16 decision about what should be done or not done in terms
17 of planning. It's certainly prompt for information
18 persons for oversight purposes, but we're not an appeals.
19 And I think we'd get ourselves in trouble with FERC, and
20 I don't think the statute gives us the authority. So if
21 the ISO was attempting to use the Oversight Board as a
22 means of appeal, we need to know that, and we need to see
23 the letter that precipitated your decision to put this on
24 the docket.

25 MR. SALTMARSH: I'm now quite sorry to report

1 there is no such letter. There are letters that I
2 believe are available to you that go back and forth
3 between the Independent System Operator and San Diego Gas
4 & Electric. It was definitely not the case that San
5 Diego Gas & Electric was planing to use the Oversight
6 Board as a vehicle for appeal. At the same time that San
7 Diego Gas & Electric made a request to the ISO that
8 certain projects be recognized for expedited treatment.
9 This is me -- I was personally contacted by telephone by
10 an attorney with San Diego Gas & Electric who suggested
11 that they would send the same material on to the
12 Oversight Board, that the electricity Oversight Board
13 that this expedited transmission project treatment was --
14 is something of an exception to the way projects were
15 normally treated in going forward in the planning
16 process, and San Diego wanted the Oversight Board to
17 understand.

18 SENATOR PEACE: Mr. Saltmarsh, perhaps you can
19 clarify for me. I'm looking at a memorandum from Ean
20 O'Neill, which states in part in December -- this is
21 dated February 25th 2000, informally requested that CAISO
22 approved and at the same time requested that the EOB
23 review the project and take a position and support the
24 expedited status.

25 MR. SALTMARSH: I would say that's was correct

1 except that there was not a letter explaining that.
2 There was a telephone call explaining that we were going
3 to be sent a packet of material.

4 SENATOR PEACE: So you're defining formally as
5 someone making a telephone call saying that they're
6 sending a packet of information?

7 MR. SALTMARSH: It is not my position that that
8 telephone call would necessary constitute a formal
9 request.

10 SENATOR PEACE: Maybe I should read the sentence
11 again.

12 MR. SALTMARSH: I understand what the sentence
13 says.

14 SENATOR PEACE: What was the sentence referring
15 to?

16 MR. SALTMARSH: I don't want to get into a
17 dispute with Ms. O'Neill. I think its inartful that we
18 presented you something that said formally requested.

19 SENATOR PEACE: So there's nothing else other
20 than the phone call?

21 MR. SALTMARSH: What we received was a phone call
22 explaining that a packet was being sent to the Oversight
23 Board for the staff.

24 SENATOR PEACE: Perhaps I'm indelicate, but as a
25 matter of appropriate management practice, I would hope

1 you would not shrink from having a disagreement from Ms.
2 O'Neill because, if that memorandum mischaracterizes the
3 communication, that's serious.

4 MR. SALTMARSH: I appreciate that perspective and
5 would only say that which is not in any way disagreeing
6 with your characterization, but it was my belief at the
7 time that I got this communication, that were there a
8 voting membership in place at the EOB, it was my belief
9 that we were anticipating getting some request to make a
10 presentation for the EOB. It is certainly the case right
11 now that San Diego Gas & Electric does not feel they have
12 any item they want to bring to the attention of this
13 body.

14 CHAIRMAN KAHN: Senator Peace, I think that this
15 dialogue is useful to illustrate that we need to
16 establish procedures to understand what we're doing, and
17 again I will have to add this is not the staff's fault.
18 They didn't have a board in year. We -- I've just
19 recently begun working with management of the EOB. We
20 have hope to institute intern management procedures
21 whereby before we do anything we ask the first question
22 of whether it's necessary or appropriate for us to be
23 considering those issues. We're going to take it to the
24 board because we can't talk to each other, so that's the
25 only way Mr. Willison and I can consider these things.

1 And before we move to investigate or think about
2 whatever, we're going to have a preliminary determination
3 of whether it's necessary or appropriate, and we will
4 consult with the legislative members in that process.
5 Only then will we decide what we should do about these
6 things. In the absence of the guidance of the Board and
7 anything to talk to about say their procedures, I think
8 the staff did the best they could, and I think they did a
9 pretty good job, and I think Senator Peace's comments are
10 well taken, but I hope their not viewed as anything about
11 an illustration of the fact that we need to get our act
12 together, and we're going to move in that direction,
13 right, Mr. Heath?

14 MR. HEATH: Thank you, Mr. Chairman. We need --
15 we will work very closely with the board on these
16 matters.

17 CHAIRMAN KAHN: Okay. Does that dispose of No.
18 11?

19 Then we can turn to No. 12.

20 Mr. McAuliffe?

21 MR. HEATH: Mr. McAuliffe is bringing to the
22 board's attention as an informational item only regarding
23 on the latest developments at the CAISO related to the
24 program to provide low participation.

25 MR. McAULIFFE: Good afternoon, Mr. Chairman and

1 others here. Following with your necessary or
2 appropriate, I'd like to shift kind of the focus on 12
3 and 13, which were brought just as informational items.
4 And given the fullness of the agenda, it's appropriate
5 for me to switch the focus and ask you if you'd like a
6 summary of these or whether you'd like to defer these to
7 another time.

8 CHAIRMAN KAHN: I think there's some utility to
9 at least introducing us to the concept and telling us why
10 it's necessary and appropriate, and I think it is
11 appropriate that you go into this.

12 MR. MCAULIFFE: Let me go through both items, 12
13 and 13. Item 12 deals with the demand responsiveness
14 programs that are being proposed either at the California
15 Independent System Operator by the Public Utilities
16 Commission. And the intent of both of these programs is
17 to try to get more demand responsiveness into a market
18 that has, at least at that point, does not have a lot of
19 demand responsiveness, and I think most of the studies
20 that I have read at least on the dynamics of this market
21 indicate that for a truly functional and competitive
22 market, we need some demand responsiveness programs. In
23 summary, I feel the ISO is trying to do as much as it can
24 to be an aggregate of both programs available and
25 participate in the ancillary services market with the

1 objective or at least the focus of getting somewhere in
2 the neighborhood of 1800 megawatts available by June of
3 this year.

4 In addition, they're trying to put together an
5 emergency demand responsiveness program for an additional
6 1000 megawatts beyond the 1800 megawatts in term of the
7 aggregated loading services program. Those are pending
8 right now. They're in development, and we'll keep you
9 apprised of the development of those.

10 In addition before the Public Utilities
11 Commission both Pacific Gas & Electric and California
12 Edison have filed advise letters. There is a draft
13 resolution that will be decided, I expect, at the March
14 16th Public Utilities Commission meeting, which will
15 either allow the offer to not be offered by the Public
16 Utilities, which, I hope, if they are approved of getting
17 maybe 500 megawatts on each utility to be responsive to
18 price in terms of the forward market. The programs work
19 in that they would solicit customers to sign up for these
20 particular tariffs or rate schedules if you will, and if
21 it's anticipated that the Power Exchange price would be
22 \$250 or greater then some of these customers would be
23 asked to interrupt, and they would be paid something
24 approximating the day ahead Power Exchange price for
25 being able to do that.

1 CHAIRMAN KAHN: Forgive me for interrupting. Do
2 you have a sense of what class of customers we're talking
3 about?

4 MR. MCAULIFFE: I think it's large industrial and
5 commercial, but I think there's somebody from the Public
6 Utilities Commission here that we could ask to answer that
7 question more specifically if you'd like. I know that
8 the PUC has tried to extend those perhaps at least on a
9 trial basis to all our customer classes as well. I think
10 the indication is that most of the respondents would be
11 large industrial and large commercial customers, but I --
12 can somebody can correct me on that if they have a
13 different impression of that?

14 CHAIRMAN KAHN: Is there someone from the PUC
15 here that can help us?

16 Seeing none, we'll go without the help.

17 MR. MCAULIFFE: So those are the generally the
18 programs that are being offered. And if you have
19 questions on this item, I'd be happy to answer those.

20 MR. WILLISON: Could you summarize -- I know
21 there's opposition to this proposal --could you summarize
22 the basis of the opposition.

23 MR. MCAULIFFE: In my estimation, not having
24 followed this in great detail, the opposition is mostly
25 focused on whether this provides the existing utilities

1 some advantage in customer retention down the road is my
2 understanding. That's the primary objection to this
3 being an issue.

4 CHAIRMAN KAHN: Is the solution that the
5 objectives are advocating preventing this activity?

6 MR. McAULIFFE: I think there are people that
7 have filed with the PUC requesting that the PUC does not
8 approve these tariffs scheduled.

9 CHAIRMAN KAHN: And therefore preventing this
10 activity?

11 MR. McAULIFFE: Not engage the utilities to offer
12 these tariffs, yes, preventing this particular activity.

13 CHAIRMAN KAHN: And are you aware of efforts to
14 extend this activity to individual rate -- individual
15 customers?

16 MR. McAULIFFE: If you're a direct-access
17 customer in California, you already know who your energy
18 service provider might be. You already have the
19 opportunity in consort with your provider to structure
20 the tariffs any way you want.

21 CHAIRMAN KAHN: Is that being employed?

22 MR. McAULIFFE: I can't answer that question. I'm
23 not privy. I can't answer that. I don't have any
24 knowledge in that particular area.

25 SENATOR PEACE: One thing I'd like to get some

1 clarification on is part of this -- part of these
2 proposals were associated with a formal request and
3 agreement by the ISO Board members to support at the
4 Public Utilities Commission a reversal of the prior PUC
5 decision not to allow the management programs, and that
6 was an agreement in return to allow for a raising of the
7 cap on the --

8 MR. MCAULIFFE: Senator Peace, if I can --

9 SENATOR PEACE: I'd like to know if there's
10 anybody playing both sides of the issues here because
11 there were some of those sellers who got the higher cap
12 of \$750 got it on the condition they would support a
13 demand management in order for the utility, and
14 somebody's double dealing that we're not fulfilling a
15 commitment, I'd like to now.

16 MR. MCAULIFFE: I certainly don't know the answer
17 to that question, but what was I was going to say is the
18 next item will tee up what has been known as price cap.

19 SENATOR BOWEN: I'm not done.

20 MR. MCAULIFFE: We're still here for sure, so go
21 ahead, please.

22 SENATOR BOWEN: So one of the problems I have for
23 this is the information is so sketchy it's hard for me to
24 tell what is going on. Probably a more in-depth look at
25 this is -- in other words, because I can't tell exactly

1 how this prom is supposed to work --

2 MR. MCAULIFFE: And we can provide that if you'd
3 like.

4 SENATOR BOWEN: Just as an example, there is a --
5 are there references to frequency of -- and no-pay
6 provisions without any explanations of how that would
7 effect -- there isn't any information about who would pay
8 for power that's -- that's not in --

9 MR. MCAULIFFE: You're addressing specifically
10 the ISO proposed program. It wasn't until yesterday that
11 their draft technical specifications -- that their final
12 technical specifications came out, but in answer to your
13 question, some of those issues haven't yet been
14 addressed. For example, the America Curtailment
15 Program -- it has yet been decided the structure of
16 payment that the ISO intends to send out. Within the
17 next two weeks or month, it is still not even clear when
18 it's going to be sent out. So I understand your
19 confusion. I'm not sure I can do much to clarify it on
20 this point, however.

21 SENATOR BOWEN: Do have any idea who's going to
22 make the incentive operate.

23 MR. MCAULIFFE: I think the obvious answer is the
24 customer. Exactly what is still not clear.

25 MR. ROZSA: Excuse me. Are you talking about the

1 utility program?

2 SENATOR BOWEN: Pardon?

3 MR. ROZSA: Are you talking about the utility
4 program?

5 MR. MCAULIFFE: I think we were talking about --

6 MR. ROZSA: The ISO program?

7 SENATOR BOWEN: The ISO program.

8 MR. ROZSA: Who pays?

9 SENATOR BOWEN: Who's going to pay the cost?

10 SENATOR ROZSA: Who pays the incentives? The
11 users of the system.

12 SENATOR BOWEN: So it is it going to be rated on
13 a per megawatt basis?

14 MR. ROZSA: Yes, broadcast basis.

15 MR. MCAULIFFE: I think it somewhat depends on
16 there's -- two different programs being developed as we
17 speak now. One is to get aggregated votes into the
18 service department. My understanding of that program is
19 customers would pay just like they currently pay for the
20 which is provision of service, which is pro-rated based
21 on actual load or will soon be pro-rated based on actual
22 load.

23 The other emergency interruptible program is
24 really very, very early on in development. It's actually
25 not clear how that's going to be structured yet, whether

1 it's going to be an auction contract. The details are
2 being worked out.

3 SENATOR PEACE: As I see it, the big picture of
4 all this is it -- the experience we've had to date is
5 that the sellers, either the utilities or providers, are
6 very sophisticated players, and they look for
7 opportunities to gain the system.

8 SENATOR BOWEN: That's why I'm worried. That's
9 exactly why I'm asking questions.

10 SENATOR PEACE: That's what this program is
11 designed to do, to create economic incentive that will
12 take away the current incentive for the people that pull
13 power from the ancillary market purposely in order to run
14 prices up so they can come in at the last minute and
15 force the ISO to buy it under extorted circumstances, so
16 and then that was the reason why the negotiated
17 settlement so to speak, in an informal contract was made
18 I'm concerned about the cap being raised from \$250 to
19 \$750, where there's no cap at all employed, we'll go to
20 750, but in return you've got to support having these
21 market (inaudible) that will allow the ISO to broaden the
22 market and rationalize the relationship between these
23 different small markets so that you can't gain the
24 ancillary market.

25 SENATOR BOWEN: The question then in what way

1 what kinds of games will be played to take advantage of
2 this in ways that we're not anticipating, or do you feel
3 for sure that that's --

4 SENATOR PEACE: I'm sure that no matter what you
5 do, they're going play the game. I believe the PUC's
6 original decision was fundamentally flawed, because it
7 forced the utilities to be very unidirectional players.
8 It basically doesn't allow them to have any kind of
9 conservation tool as part of the way to hedge their
10 portfolio, and we don't want those utilities, either as
11 the providers or as competitors in the market, to be
12 players that are nothing more than day of -- hour by hour
13 purchasers. If we fall into that trap by insisting to
14 the competition logic, then we're going to end up with
15 this kind of situation that occurred in some of the other
16 markets in the east where you not only had management
17 price caps during high-energy consumption, you had
18 blackouts. We need to get the tool. I'm less concerned
19 about price caps as I am about the realty that failure
20 to give these tools, these really controversial tools to
21 the utilities.

22 SENATOR BOWEN: I don't have any argument with
23 that. I'm just looking -- what are we setting up where
24 we may find gaining of the tools.

25 SENATOR PEACE: And keep in mind, this discussion

1 is happening in a back drop wherefore residential
2 customers the price point is relevant. It identifies
3 them, the conversations happen in a back drop where, in
4 the San Diego area, the current level of energy
5 consumption is at the point where of the Energy
6 Commission had appointed five years ago that it would be
7 at the year 2020 we are right now. They said it would
8 not occur until 2020. So the success of the ISO and to
9 even be able to reach the additional capacity out the
10 system. It easily wasn't designed to accommodate, and we
11 benefited from it. We were the major region in the
12 country that had extreme weather circumstances, all the
13 things that add up to blackout, and didn't have one. We
14 were it. Every place else had significant reliability
15 failures over the last two years, but we're going to get
16 to the point where we've reached the limit of their
17 ability to manipulate late the totals of the system.
18 It's also why it's so important to get the -- we need
19 their assets. We have them technically, but they're not
20 being deployed with the degree of efficiency that they
21 would be if they were actually integrated into the
22 system.

23 CHAIRMAN KAHN: Senator Bowen, anything more?

24 Can we move on to No. 13?

25 MR. McAULIFFE: Thank you.

1 SENATOR BOWEN: I'm sure we'll have further
2 discussions.

3 CHAIRMAN KAHN: I think Mr. McAuliffe can take a
4 note of the various questions, and I will try to provide
5 those at the next meeting.

6 MR. SALTMARSH: And moving on to 13. If I can,
7 quite quickly what we try to do is provide you a brief
8 summary of what we considered the most significant or at
9 least of the most widely publicized reports on the
10 evolution of the market to date. We provided that in
11 executive summaries to you or conclusions, those kinds of
12 things, and we would be happy to provide the entirety of
13 the those reports if you'd like.

14 Let me just add a couple of items, however. I
15 should note that some of the those conclusions in those
16 points have been hotly contested by others, knowing that
17 this market is viewed differently from different
18 perspectives. So I want to make sure that you understand
19 that even those -- these conclusions were put together by
20 the Market Surveillance Committee and the others
21 associated with the Independent System Operator, not
22 everyone agrees with those conclusions. However, let me
23 point out that I think there has been ample evolution in
24 this market from April of 1998; however, I think there
25 are a number of issues ahead of us that will be quite

1 challenging to solve, and we can talk more about those at
2 a subsequent meeting if you'd like.

3 CHAIRMAN KAHN: Why don't you give us a preview?

4 MR. MCAULIFFE: My preview is price caps, which
5 you will hear more about as the next item I believe. In
6 addition, there are a number of issues, conjunction
7 management, transmission access charges, which you will
8 also hear about subsequently as well. So I think those
9 are some of the big issues as well as how quickly
10 generation is affected in this market is one of the big
11 items yet to be played out, and that has to do with a
12 whole number of issues in terms of grid management
13 planning and transmission planning as well.

14 MR. WILLISON: Is there a requirement that there
15 be a reply or rebuttal to those records by the ISO?

16 MR. MCAULIFFE: I should probably defer that to
17 either the ISO or legal counsel, but I don't think
18 there's a requirement per say. Most of the these have
19 been filed with the Federal Energy Regulatory Commission,
20 and associated with most of the those filings, if, for
21 example, they've been an Independent System Operator
22 Surveillance Committee Report, the ISO has also filed
23 comments to those -- sometimes clarification, sometimes
24 taking issue with some of the subtleties of the Market
25 Surveillance Reports. Does that answer your question?

1 MR. WILLISON: Yes. Thank you.

2 CHAIRMAN KAHN: Any other comments?

3 Any comments from the public on Item 12 or 13?

4 Thank you very much.

5 That brings us to Item No. 14.

6 MR. HEATH: This is one that has been quite
7 conversational last year.

8 MS. MANNHEIM JUBIEN: Good afternoon, Mr.
9 Chairman. I'm Sidney Mannheim Jubien. I'm a Senior
10 Staff Attorney with the Electricity Oversight Board, and
11 I'm here to comment on the status of the Independent
12 System Operator's bid cap authority, and the most
13 important thing to note is that the ISO needs to make a
14 decision soon about whether to draw up the current bid
15 cap to \$750 to \$500.

16 There are several criteria on which the ISO plans
17 to make it's judgment, and those items are listed on Page
18 2 of my memorandum to you. And those three areas are
19 whether the markets are not competitive, whether they are
20 not actually manned by management, or whether the
21 investors of utilities have not obtaining practical
22 ancillary service, and in the power management system in
23 the Public Utilities Commission for policy decision, and
24 it was that decision that disallowed the utility from
25 creating pretty much anything other than the PX.

1 I'd like to update you on a couple of things,
2 particularly with respect to demand site management
3 options and products. In fact, the Power Exchange has
4 filed it's proposed amendment to No. 13 with the Federal
5 Energy Regulatory Commission to activate the purchase and
6 sale of ancillary services either through trade, not
7 through the Power Exchange Training Services Department
8 or through the registering bilateral sales, and I believe
9 that the conditional approval just was issued to the
10 Power Exchange by the FERC. It's conditional approval.
11 The Power Exchange will have to make a few more filings
12 with respect to one aspect of their application, which is
13 they will be adding three more trading locations in
14 addition to those that were previously approved. And so
15 they will now be able to offer a peak holder and a super
16 peak product that the utility should be allowed. The
17 Public Utilities Commission allowed the public to
18 purchase these products.

19 I would also like to add that the ISO Governing
20 Board -- based on my memo I understood that the governing
21 board would not be considering reducing the price cap
22 until it's May meeting with the understanding that it's
23 April meeting times were set aside for training purposes.

24 I was advised by counsel for the ISO this morning
25 that, in fact, the ISO Governing Board does plan to

1 consider their March meeting, which is scheduled for the
2 21st and 22nd day of this month, which means that if the
3 Oversight Board wants to express it's views to the ISO
4 Governing Board, it does not have much time to do so.
5 And this matter was only on the agenda as a discussion
6 point.

7 MR. WILLISON: Does that mean that our
8 jurisdiction here is only including perspective and
9 advice? We have to approach the setting of the caps or
10 the lowering of the caps.

11 MS. MANNHEIM JUBIEN: You have no authority to
12 set or approve caps. I should also add that in this case
13 the ISO does not have to make a FERC filing under it's
14 exiting tariff. The ISO itself can raise and lower the
15 caps through, I believe, November of 2001. So we would
16 not have the opportunity to file the context of the FERC
17 comments with respect to this particular ISO Governing
18 Board action, and often the Oversight Board makes it's
19 comments to the ISO in the form of submissions to the
20 Public Commission.

21 CHAIRMAN KAHN: Any comments?

22 SENATOR PEACE: I'm just a little confused about
23 how the ISO can consider this issue in March when they
24 won't have had a PUC ruling by then on the --

25 MS. MANNHEIM JUBIEN: I would defer to somebody

1 from the ISO.

2 CHAIRMAN KAHN: Mr. Winter, can you enlighten us?

3 MR. WINTER: Clearly, the price caps will be an
4 issue as they have always been in the past. We will make
5 a decision at the March board, and it will probably have
6 to have some conditions put on it. In other words, has
7 the PUC acted? Have we got a workable participating load
8 agreement in place?

9 SENATOR PEACE: I assume that if, in fact, you've
10 scheduled it for March, then the PUC has not acted to
11 give this authority. So if there's no PUC decision, then
12 you will act to reduce the price cap?

13 MR. WINTERS: We will make our recommendation but
14 make that contingent on what the PUC does.

15 Now, it was understanding that they would act by
16 that time. If they do not, then we do not have to take
17 any action on whether they did or did not approve it.

18 CHAIRMAN KAHN: Any other comments or questions?

19 Okay.

20 Thank you very much, Mr. Winter and Ms. Jubien.

21 Thank you.

22 Number 15.

23 MR. ARIKAWA: My name is Ben Arikawa. I'm an
24 economist with the Oversight Board. Good afternoon,
25 Chairman Kahn, Board Members, and staff.

1 The reason I'm here today is to discuss the
2 transaction access charge or TAC -- that's more commonly
3 known as TAC if you've been sitting in meetings for the
4 last 10 or 12 months. AD 1890 will (inaudible) that the
5 ISO shall recommend a custom method for adoption to FERC
6 within two years of the ISO operation. ISO started
7 operation in April of 1998, so to meet that statutory
8 requirement, the ISO must file with FERC by the end of
9 this month. To this end, the ISO has initiated a TAC
10 process which started in December of 1998. They
11 solicited comment from stake holders. They held monthly
12 meetings from about April through October of last year.
13 This group of stake holders developed several proposals.
14 ISO management also provided their own conversion of a
15 successful method which was presented to the ISO board in
16 October of 1999.

17 The ISO board did not adopt the ISO management
18 proposal in it's entirety. Rather, they adopted broad
19 principals and requested that ISO management work with
20 the ISO board -- excuse me -- with the subcommittee of
21 the ISO board. This subcommittee, or discussion group as
22 I think it's more commonly known, met almost weekly
23 between November and the end of December. There were
24 also additional meetings scheduled earlier this year.
25 The ISO twice requested delays at FERC for filing the TAC

1 method to receive more public and board input; and, as a
2 result of the discussions on February 4th, a coalition of
3 end users presented a what is termed a compromise TAC
4 method.

5 This TAC method -- this end user compromise
6 proposal modified an earlier ISO management proposal on
7 TAC. There are two or three major modifications. One of
8 them was to increase ceilings on mitigation amounts by --

9 CHAIRMAN KAHN: Excuse me. Pardon me for
10 interrupting. Who were these end users?

11 MR. ARIKAWA: The end users -- there are three
12 end users: Mike Florio, of Turn; Barbara Barkovich,
13 California Large Industry Consumers Association; and
14 Carolyn Kerhein, of CMA.

15 CHAIRMAN KAHN: CMA?

16 MR. ARIKAWA: California Manufacturers
17 Association.

18 CHAIRMAN KAHN: Okay. Thank you.

19 MR. ARIKAWA: One of the modifications was to
20 increase ceilings on mitigation amounts by the current
21 transition owners. These amounts originally had been 20
22 million for PG&E and Edison on annual basis. San Diego
23 was up to \$5 million. These amounts were increased to 32
24 million for PG&E and Edison and up to \$8 million for San
25 Diego.

1 The mitigation amounts were to be used to offset
2 charge to the new participating transmission owners.
3 This is called a hold-harmless provision. There's also
4 a -- what was called on off-ramps creation. This
5 provided for a re-evaluation of benefits after three
6 years, which would allow the existing three IOU's to sit
7 down to say that if the benefits that were expected at
8 the beginning of the period were not being realized, then
9 these contributions that they were making for mitigation
10 could be reduced.

11 At the same time, it could also be a new --
12 participating transmission owners could decide, based on
13 the fact that mitigation amounts were reduced, whether
14 their participation in the ISO grid was in their own
15 self-interest, and there's an exit clause there. There's
16 also a change that the transmission access charge could
17 be assessed on billed loads rather than gross loads. And
18 also there's also an additional provision that was not
19 big but there was minor changes to it.

20 There's something call a Revenue Review Panel,
21 which would arbitrate suits between the ISO and
22 participating transmission owners over revenues
23 requirements of the transmission assets.

24 CHAIRMAN KAHN: Yes, Debra?

25 SENATOR BOWEN: This is it interesting, but the

1 questions that I really have about these things are not
2 so much what are the technological or technical
3 specifications, but who wins and who loses. Based on
4 those changes, who benefits, and who suffers? And I
5 think it's very hard for me to evaluate these systems
6 without knowing how various groups are impacted.

7 MR. ARIKAWA: Oh, part of the problem all of
8 the -- all of the numerical data is subject to
9 confidentiality which all transmission owners who
10 participated in the process signed, which we signed also.
11 I can talk in general terms.

12 SENATOR BOWEN: I don't need to know which
13 company specifically but more broadly. Does -- do --
14 what I'm trying to get, as you look at how these charges
15 are applied, it's a significant amount of money, and you
16 have to allocate it a certain way. You know you can
17 allocate in a way where residential customers pay more or
18 certain groups of industrial customers may more,
19 utilities pay more. I don't have any idea where the
20 burden of these charges is falling.

21 MR. ARIKAWA: The ISO --

22 SENATOR BOWEN: And since I view the Electricity
23 Oversight Board as the one place in all this that's not a
24 stake holder and where the responsibilities are, how does
25 this effect the citizens of the state of California?

1 That's the most relevant set of inquiries.

2 MR. ARIKAW: The ISO TAC does not have -- does
3 not affect the allocation to end users. It may affect
4 the total amount that end users pay but proportionately
5 where residential customers will end up paying a larger
6 proportion than commercial customers is not subject to
7 debate in the TAC, and that is it's either a result of
8 something that happened at FERC or whether in the various
9 governmental -- at the various governmental agencies or
10 governmental entities which might join the ISO grid. The
11 ISO -- the way the way the proposal has been crafted and
12 the understanding of these end users is that there may be
13 -- there are expected benefits in the amount of at least
14 \$72 million to the utilities that would offset the cost
15 payment of the payments they're making for mitigation.
16 So it's supposed to be, at least the expectation is, that
17 it will be mutual just on that basis.

18 There's also additional benefits that are very
19 difficult to quantify which were added side benefits.
20 There is some expectation of the additional benefits from
21 the greater competition on the supply side, and that is
22 supposed to lead to the reduction in energy prices and
23 service polices. But these have not been quantified.

24 SENATOR BOWEN: Okay. But my difficulty is this:
25 Is all the technical part of how this would work and all

1 the alternatives are here, but there's no policy
2 evaluation of how costs get born and what the pros and
3 cons of doing various things are, and it's just hard for
4 me to imagine that anybody around this horseshoe can make
5 any kind of evaluation of whether the technical proposals
6 make any sense if we don't know who they effect and how
7 and what the pros and cons are.

8 MR. WILLISON: And I guess I have a derivative
9 question to that, which is, again, I guess our influence
10 is in the submission we would make to FERC, not in any
11 decision that we would make here to approve algorithm or
12 another.

13 CHAIRMAN KAHN: Assemblyman Wright right had a
14 question.

15 ASSEMBLYMAN WRIGHT: What I don't get -- I know
16 the Los Angeles DWP had indicated that it was prepared to
17 participate, but it didn't be want to have an increase of
18 their rates. Since we give you lines, and why do we pay
19 you to give them to you. How does your proposal say
20 effect that unit or a unit like SMUD or some of the
21 others?

22 MR. ARIKAWA: It's not my proposal. It's the
23 ISO's proposal.

24 CHAIRMAN KAHN: Is there an ISO representative
25 that can come up and help us out? Mr. Winter?

1 MR. WINTER: Let me try to try to clarify this at
2 the 50,000 foot level so you can all understand where we
3 are. In the formation of the AB 1890, it contemplated
4 that all the municipalities and all the IOU's would have
5 joined the California ISO and then we would be in a
6 situation that high voltage lines that benefited all of
7 the participants in all of the different areas would in
8 fact be benefiting from the lines; and, therefore, they
9 should be born by all the people involved. So AB 1890
10 says that effective March 31st, two years after the
11 formation of or the development or start-up of the ISO,
12 that we would move to this quote overall rate that would
13 spread all the costs. As I mentioned, that anticipated
14 all the municipalities being a part of that program.
15 Short of the us taking some action of proposing
16 something, we, in fact, are faced with a situation where
17 we would have to, under AB 1890, roll that rate into
18 everyone. What we have chosen is to try and come to some
19 agreement of how we move those costs.

20 Now, there is absolutely no cost shift to anyone
21 if, in fact, DWP does not join. So they still have the
22 right to join or not join, and what we have tried to do
23 is develop a program and remember in this whole program
24 there is no right or wrong, and somebody did something
25 bad or somebody benefits. It's more an issue of timing.

1 The investor utility built their transmission lines in
2 the 1930's, 50's, and 60's; and, therefore, they are very
3 depreciated assets with very little requirement for
4 revenues to support that. The municipality's coming
5 along later built a lot of their lines later in the
6 period, so on a cost basis, they have much, much more
7 revenue requirement for their lines than the
8 investor-owned utilities.

9 Now, this evens out over time because we are now
10 faced with the addition of transmission lines occurring
11 today, which are going to cost a lot more than what the
12 municipalities have currently, and our program is to then
13 try to shift those costs to everyone in the state because
14 in fact everyone does benefit from the higher voltage
15 lines. The local -- what we're talking local lines, we
16 need in the particular area be it the Los Angeles area,
17 San Diego area, Northern California -- and they're
18 established based on their revenue requirement. So it's
19 not a thing of where people are gaining or losing. It's
20 they've got to recover their rates.

21 And Senator Bowen asked the right question is
22 what is the benefit. Well, there's lots of benefits
23 everybody sees that this is a move of cost from say the
24 investor-owned utility to the municipality who now has a
25 higher rate. So what we're trying to do is present a

1 compromise, and ideally that compromise would be
2 attractive to the municipalities and encourage them to
3 join, while at the same time being fair to everyone in
4 California valuing their assets, what it costs, just like
5 the IOU's and again going forward. We question would we
6 have a more uniform system that everybody participated
7 in.

8 ASSEMBLYMAN WRIGHT: Let me try to understand. I
9 live in DWP area. We are currently not in the ISO
10 service area. Should we join under your proposal? Is
11 the cost neutral, cost plus, or cost minus? It either
12 costs me, it will be the same, or it will cost me less --
13 one, two, or three.

14 MR. WINTERS: Okay.

15 ASSEMBLYMAN WRIGHT: No. One, two, or three. It
16 either costs me more, it's cost neutral, it costs you
17 less.

18 MR. WINTER: It's going to cost you and DWP a lot
19 less.

20 ASSEMBLYMAN WRIGHT: So why doesn't DWP to want
21 to be in a situation where their cost is less?

22 MR. WINTER: I'm not sure. I think you'd have to
23 ask them that question.

24 ASSEMBLYMAN WRIGHT: Their presumption is -- what
25 you propose will cost more --

1 SENATOR PEACE: Because they want the less to
2 even be more less.

3 ASSEMBLYMAN WRIGHT: That was very clear.

4 SENATOR BOWEN: Less is more. We know.

5 SENATOR PEACE: It's the benefit of being neither
6 a lawyer nor an engineer.

7 MR. WINTER: Let me be fair to DWP. It is also
8 how you assess those additional benefits to joining.

9 SENATOR PEACE: Part of that -- there's two
10 things here. DWP's over deployed in transmission
11 capacity. Second, they have a historical rating
12 structure. They're being forced to move away off that
13 subsidy as a matter of fact. They've also taken on their
14 over employment, and they're starting to shrink down the
15 size of the DWP. And what -- in the short-term the
16 strategy of the utilities in general and DWP in
17 particular is to try to have the best of both worlds to
18 not join and take on the responsibilities of the joining
19 but still get to vote. To have actual representation on
20 the ISO acts, to participate in all of the above. I'm
21 not criticizing that. If you and I were in business and
22 we were in that position, we'd probably do the same
23 thing. But at some point, they're going to face the
24 question of whether their insistence of getting more or
25 less will actually be a critical -- not a -- will be the

1 reason why we have blackouts in California. If we have
2 blackouts this summer or next summer, in my view it will
3 be 90 percent likely because the communities have not
4 joined the ISO and given the ISO to opportunity to
5 maintain the kind efficiencies to the operation that they
6 have in the balance of the system. If we have blackouts,
7 it's going to fall 100 percent on the shoulders of DWP
8 and the other --

9 SENATOR BOWEN: Where's David Friedman when you
10 really need him?

11 SENATOR PEACE: These may not occur in the LA
12 area.

13 SENATOR BOWEN: They won't. We're cool.

14 MR. WINTER: Let me, in defence of the muni,
15 since I do try to play this independent role -- the
16 municipalities have worked very well with the ISO. I
17 mean they have made their units available. On the other
18 hand, certain contractual restrictions limit us on using
19 some of the facilities.

20 SENATOR PEACE: In their defense also, the muni's
21 have been trying to get clarity out of the internal
22 revenue service on the consequence of moving their
23 facilities into non-public ownership, and they now, in
24 relatively recent days, really have finally got a
25 definitive rule out of the IRS and the ability to move

1 those assets. I would not even have recommended it
2 without that assurance from the federal government. Now,
3 that's done. It's not the board. We have to get about
4 business.

5 ASSEMBLYMAN WRIGHT: Can you look at that DWP
6 proposal in muni terms?

7 MR. WINTER: Yes. Very clearly, I received
8 David's letter and have reviewed it. That has been a
9 part of our decision, and I have to say the groups are
10 working. The ISO will be presenting in it's March board
11 meeting the ISO's position. In fact, I believe their
12 meeting among the final group to recommend to me that
13 I will have to weigh that against what I thing is fair
14 and what we think is the best interest of everybody in
15 California.

16 CHAIRMAN KAHN: Mr. Heath, you wanted to make
17 some comment?

18 MR. HEATH: On the side, Mr. Chairman, thank
19 you. This is one you can see that we're teeing up for
20 you. Mr. Winter has just mentioned that ISO governing
21 board will take action on this at the next meeting. We
22 -- the board is on schedule for future board meetings of
23 the EOB. We should probably be hearing that item again
24 on its final form on March 27th. That will then put us
25 in a position of trying to go forward with the State's

1 response to the proposal of FERC.

2 CHAIRMAN KAHN: Okay. Any other comments?
3 Anyone?

4 MR. WINTER: I would like to correct one thing.
5 I believe the ISO board member, Carolyn Kerhein, was
6 identified as being associated with the California
7 Manufactures Association. That is not correct. She
8 represents the commercial class end users on the board,
9 and she also was not a member of the board team that was
10 reviewing this but, because of our interest, has sat in
11 most of the meetings. So I just wanted to correct that
12 in the record so that no one would say she was
13 representing someone she was not.

14 CHAIRMAN KAHN: Thank you very much.
15 Yes?

16 MS. MANNHEIM JUBIEN: I'd like to respond. This
17 is Sidney Jubien, and I'm Oversight Board Staff. To
18 Senator Bowen's question regarding how costs end up in
19 the customer's bill. As a transmission access charge, it
20 is a FERC jurisdictional charge. The FERC has a certain
21 jurisdiction over unbundled transmission charges, be they
22 they wholesale or retail up until today, including today,
23 FERC rate making -- the FERC has deferred the manner in
24 which the California Public Utilities Commission had
25 allocated rates, and it's called the Equal Percentage of

1 Marginal Cost Rate Methodology, and it actually has been
2 considered not to be particularly a small consumer
3 friendly. There is one proceeding currently pending
4 before the Federal Commission now involves PG&E unbundled
5 transmission rates. This will go to hearing on this
6 issue and one other issue, and commission staff proposes
7 a different methodology, it's called a 12-month peak
8 coincidence. It's based on allocating the cost to
9 customer places based on demand, and that will be
10 considered by the FERC and ruled on within the next few
11 months. It doesn't necessarily have any applicability
12 to any other rate making cases, and I would do -- the TAC
13 proceeding is offering an opportunity for the state to
14 comment on how unbundled retail transmission rates ought
15 to be allocated to the consumer.

16 CHAIRMAN KAHN: To whom?

17 MS. MANNHEIM JUBIEN: To the Federal Regulatory
18 Commission.

19 CHAIRMAN KAHN: Got it.

20 Senator Bowen?

21 SENATOR BOWEN: Done.

22 MR. ROZSA: One second.

23 CHAIRMAN KAHN: Sure.

24 MR. ROZSA: Could you come back for a second?

25 So, I'm trying to understand Gary's' term teed up and

1 your final comments that you are sitting on on these
2 conversations as some sort of independent evaluator of
3 them and you propose at the end of these conversations
4 and when the filing is made at FERC to go there and offer
5 on behalf of the state of California your opinion as to
6 those things.

7 MS. MANNHEIM JUBIEN: Well, the Oversight Board
8 would have an opportunity to look at what rate making
9 would be desirable. The ISO is not looking at how to
10 allocate cost to the end user customers. They are not
11 involved in looking in costs between municipalities and
12 investor-owned utilities, but their proposal will not
13 treat allocation of these costs.

14 MR. ROZSA: You're talking costs to customers
15 now? Actually, this is probably talking about a
16 particular item we have down the road here. You're
17 talking about PUC and the Oversight Board, but I was
18 under the impression that allegation of transmission
19 costs to end users wasn't PUC jurisdiction.

20 MS. MANNHEIM JUBIEN: I believe our current
21 memorandum that I've been handed between the Oversight
22 Board and the PUC says that retail rate design is an
23 Oversight Board matter -- retail rate design is an
24 Oversight Board matter.

25 MR. ROZSA: All right. Thank you.

1 THE COURT REPORTER: Mr. Chairman, could we take
2 a break, please?

3 CHAIRMAN KAHN: Let's have a 10-minute break.

4 (Recess.)

5 CHAIRMAN KAHN: All right. We'll begin. Is the
6 court reporter back with us? Sorry for being so rugged
7 today.

8 Ben, do you do you want to add something before
9 moving on to 16?

10 MR. ARIKAWA: Yes. I have one -- I want to
11 correct the record on one point and make one comment.
12 The members of the end user coalition -- Mr. Florio, Ms.
13 Barkovich, and Ms. Kerhein -- were not acting as
14 representatives of the respective companies or
15 affiliations. They where acting as ISO Board members in
16 their capacity when they put together the end user
17 proposal. I just want to make that clear because Mr.
18 Winter also made it clear to me.

19 Also one additional comment I'd like to make is
20 I'd like to commend the ISO Board management for it's
21 desire to make a compromise and for opening up the
22 deliberations. The board might have otherwise -- because
23 we were -- the Oversight Board staff was allowed a great
24 deal of access to the board meetings as part of this
25 process.

1 CHAIRMAN KAHN: Thank you. I will make one
2 reciprocal observation. I think that Senator Bowen's
3 comment about what you find interesting is well taken as
4 we try to communicate with each other. They -- just keep
5 that in mind.

6 MR. ARIKAWA: Yes. The whole list of issues --
7 their are a whole list of issues concerned with that.

8 CHAIRMAN KAHN: Thank you very much for your
9 work.

10 We're on number 16.

11 MR. SALTMARSH: Mr. Chairman, Item No. 16 makes
12 reference to and was supplied to us and concerns a
13 memorandum of understanding between the EOB and the
14 Public Utilities Commission. Approximately -- well, it
15 would be the budget process of putting in place the
16 1998-1999 California State Budget. The Oversight Board
17 and Public Utilities Commission were each given some
18 directing language within that budget to undertake a
19 memorandum of understanding concerning coordination of
20 representation of state governmental interests before the
21 Federal Energy Regulatory Commission. A document was put
22 together pursuant to that directive. It was approved by
23 the PUC. By the time it came back to the Oversight Board
24 for consideration, possible approval, the Oversight Board
25 was in a circumstance where it did not have a meeting

1 quorum.

2 CHAIRMAN KAHN: Excuse me for interrupting. When
3 was the PUC, supposed to --

4 MR. SALTMARSH: The PUC approval was, I believe,
5 in February of 1999, February 18th, 1999.

6 CHAIRMAN KAHN: So we're talking almost 13 months
7 ago.

8 MR. SALTMARSH: There has been some change in
9 membership including two new members to that commission
10 since that time. Obviously, the entire voting membership
11 of the Oversight Board is new since that time, and
12 there -- besides that, as you pointed out, due to the
13 intervening period of time, was a certain additional
14 amount of experience that the state has had in just
15 watching the market at all. And in that regard, we put
16 this document before the Oversight Board for your
17 consideration. Clearly, as staff think it is important
18 for the board to take up reflection on both the
19 mechanisms for coordination between the state agencies,
20 the roles that have to date again been set forth, and I
21 would note that the Public Utilities Commission and the
22 EOB staffs have been endeavoring to carry out their
23 activities pursuant to this document even though it's a
24 document that had not had approval on this side of the
25 San Francisco-Sacramento corridor.

1 It is before you now for you to consider whether
2 you will eventually like to bring forth consideration for
3 approval. Whether you would like to engage in some level
4 of additional discussion with other policy makers on
5 what's the best mechanism to move forward on state
6 participation.

7 CHAIRMAN KAHN: Is there a similar thing with
8 respect to the Energy Commission?

9 MR. SALTMARSH: There is not.

10 CHAIRMAN KAHN: Why not?

11 MR. SALTMARSH: That's Senator Peace's
12 several-word answer. At the time this was put in place,
13 there were two agencies -- Electricity Oversight Board
14 and the PUC -- that were generally appearing before the
15 Federal Energy Regulatory Commission and representing
16 some significant number of state interests on behalf of
17 the state. The California Energy Commission has filed
18 pleadings before the Federal Energy Regulatory
19 Commission, but their participation has ended over the
20 past recent years. To be very specific. On occasional
21 items that the Energy Commission considered to be within
22 it's particular area of expertise or concern, but the
23 number of proceedings in which the Electricity Oversight
24 Board and the Public Utilities Commission were involved,
25 particularly were simultaneously involved, was a large

1 number. At the time, I was not aware, to the best of my
2 knowledge, that the CEC was a party to receive documents
3 and monitor several proceedings but was not actively
4 participating in any. Nevertheless, the way the budget
5 was structured, it was mandatory on the Public Utilities
6 Commission and the Electricity Oversight Board to
7 undertake memorandum of understanding. It wasn't
8 prohibited of someone else, another agency, also be
9 reflected in it. Numerous discussions that led to the
10 creation of this, the attempt to sit down and craft a
11 document, the Energy Commission was represented at first
12 three or four of these meetings, and various proposals
13 went back and forth. The Energy Commission eventually,
14 as I understand their characterization of it and as I
15 would characterize it, withdrew themselves in the belief
16 that rather than try to enter into an agreement that
17 specifically set forth what each agency would be
18 responsible for and what they would defer to someone else
19 on.

20 The Energy Commission's participation at FERC had
21 been small enough and had been sufficiently case by case
22 that they weren't really feeling that this was accurately
23 tailored to sort of reflect their ability to on an
24 occasional basis when necessary participate in some FERC
25 proceeding.

1 CHAIRMAN KAHN: Well, is there an agreement
2 between the PUC and EOB as to what an appropriate role
3 for the Energy Commission is?

4 MR. SALTMARSH: There is not an agreement between
5 the PUC and the Electricity Oversight Board as a
6 five-member policy making body as to what the appropriate
7 role of the -- or the purview of the Energy Commission
8 is.

9 There was, among the staff who are trying to
10 create a document before the agencies, clearly a
11 reflection among the staff of the EOB and PUC that there
12 are areas on which the FERC Commission is the state's
13 primary policy agency. It's my opinion that the largest
14 share of the those areas are -- and to the benefit of the
15 Energy Commission areas that are subject to state
16 jurisdiction rather than having the state argue it's case
17 before the Federal Regulatory, so what, if you went down
18 to look at those, I think most of the areas that it
19 really speaks to why they are much less frequently before
20 FERC, most of the these areas are ones in which they're a
21 direct regulator and they go up.

22 CHAIRMAN KAHN: Who, at EOB, innervates the PUC?

23 MR. SALTMARSH: A broad variety of our staff
24 does.

25 CHAIRMAN KAHN: In terms of coordination of this

1 document.

2 MR. SALTMARSH: It is ultimately the
3 responsibility of the myself and an assistant general
4 counsel.

5 CHAIRMAN KAHN: I guess my inclination would be
6 that you ought to go back to the PUC and see what they're
7 saying about this, and also it seems to me, for my own
8 sake, that unless we have different agencies in
9 California expressing independent views, the better we
10 are and the more we can get a coordinated voice, better
11 it is. The people in California don't need to pay for
12 two or three or four agencies to file briefs in the same
13 place. If we can initiate a process to get the Energy
14 Commission to comply, if they don't want to do it, well,
15 we'll have to figure it out later. At least I think we
16 ourselves ought to form efficient use of our own energy.

17 MR. WILLISON: Absolutely.

18 CHAIRMAN KAHN: Do we need to take action or can
19 we just defer?

20 MR. SALTMARSH: No, this is it simply put before
21 you to --

22 CHAIRMAN KAHN: I think it's the sense of the
23 board that you go back to the PUC and you go back to the
24 Energy Commission and we initiate a process a policy goal
25 to go out and enter into something that, A, all three

1 boards agree to now; and, B, that has the minimal amount
2 of duplication.

3 Anybody else want to comment on this?

4 ASSEMBLYMAN WRIGHT: I guess -- assuming that
5 something is broken and you want to repair it with this
6 document, what is it that that's broken that necessitates
7 this?

8 MR. SALTMARSH: I'll try to speak as plainly as
9 possible.

10 ASSEMBLYMAN WRIGHT: That's good.

11 MR. SALTMARSH: There were a number of cases in
12 which the ISO the Electricity Oversight Board the PUC and
13 others were all in the same docket at FERC, and we ended
14 up with -- particularly on behalf of the Oversight Board
15 and the PUC -- several cases where we had conflicting
16 positions were effectively litigating before each other.
17 The state litigating against the state in federal
18 government.

19 ASSEMBLYMAN WRIGHT: That probably looked real
20 good to the people back there.

21 MR. SALTMARSH: What happened was we were in
22 positions that were not directly in conflict but not
23 identical, and it gave the federal government an excuse
24 to it make much more comfortable and easy for them to
25 stay, "Sometimes we try to give special deference to the

1 position of the state, but the state kind of has vague
2 information here, so we'll come down with some third
3 thing that's somewhere in the neighborhood of all of
4 them." When, if we went in with one clear specific
5 question, we would have had a much better argument to get
6 them to accept it as was presented.

7 ASSEMBLYMAN WRIGHT: Your point that I think the
8 Chairman's remarks even more acutely because if we leave
9 out one of the agencies because, you know, then you're
10 very well dealing with the old Lyndon Johnson theory
11 about the tent, and you want to get everybody in the
12 tent.

13 MR. SALTMARSH: I would absolutely agree. I want
14 to make no aspersion to the proper role of the other
15 agencies when I say that over the course of the past year
16 and a half or however much federal workings of this
17 document with the Oversight Board, I'm not actually aware
18 of one of those proceedings in which the PUC has come in.

19 ASSEMBLYMAN WRIGHT: But also, and I think this
20 is going to work, is who determines which category the
21 issue falls into because what I would imagine took place
22 in some of the filings that I've seen previously is that
23 I don't think that you knew that the other people had
24 actually filed. And so, if you perceived that it was a
25 transmission issue and the PUC perceived that it was a

1 distribution issue, and somebody else perceived it as
2 something else, then you could independently file
3 something and arrive at the same place. So I think there
4 needs to be something that does that, and what I don't
5 see in her as well is it something that would dictate, in
6 the event that there is a dispute, how that dispute is
7 resolved. And I think that all of that should happen
8 here before we get to Washington so that if there was a
9 dispute as to who's jurisdiction it is, there ought to be
10 somebody who makes that decision, and it ought to be
11 resolved here so that we don't go to Washington with
12 conflicting points of view of what the position of the
13 state of the California is.

14 MR. SALTMARSH: I agree with you. There has been
15 some of what you suggested might have been happening and
16 slight variations thereon, and I think it is certainly
17 the case that this document was put together with the
18 best intents of staff on both sides within a time window
19 they were trying to meet, and it could appropriately be
20 the subject of further reflection.

21 ASSEMBLYMAN WRIGHT: Just to finish beating this
22 horse, part of the problem that you have is that the
23 agencies involved don't all share the same position. And
24 to some extent, the agencies compete against one another,
25 and in that respect then, they begin competing for their

1 own self-interest, which may or may not the position of
2 the state the California, but it really represents the
3 point of view or the self-interest of that particular
4 agency, and to the extent that even if you fill out
5 this document, if you don't have a process that clears
6 out who gets to do it, then you're really right back at
7 square one. Then you'd be here arguing was it
8 transmission or was it whatever, but that could
9 conceivably be subsequent to the filing at FERC, which
10 would put us in the same position that you're trying to
11 alleviate.

12 MR. SALTMARSH: I would comment only behalf of my
13 colleague that I think there has been a pretty good faith
14 effort to coordinate and work those things out ahead of
15 time and not surprise each other and with conflicting
16 interpretations of what it is. But, just as you've
17 suggested would probably be the case, there have been
18 cases where we started off with different perceptions. I
19 just wanted to get in the record a statement that there
20 have been efforts to work it out. We will certainly go
21 forward with the Chairman's directive to begin additional
22 discussions if we can come up with something even more
23 involved.

24 CHAIRMAN KAHN: I would just amend my comments to
25 incorporate Senator Wright. I think he is really right

1 about the dispute resolution about that.

2 Any other comments about this item?

3 Okay. Let's move to No. 17.

4 Mr. Saltmarsh, it's your day for the hot seat.

5 MR. SALTMARSH: Or the barrel, as the case may
6 be.

7 CHAIRMAN KAHN: We don't have any materials on
8 this I think.

9 MR. SALTMARSH: We do not. You do not, and the
10 reason for that is at the time this was contemplated as
11 an agenda item with notice requirement, there were some
12 discussions going on with the PUC about this item, and
13 subsequently, we felt that the window of opportunity was
14 a little different than we thought it might be.

15 There was, for historic benefits, December 8th of
16 1998, there was a fairly significant power outage that
17 was caused in such a way as it was a little unclear
18 whether the causation was in the transmission system or
19 the distribution system, and the Independent System
20 Operator undertook investigation of what might have gone
21 wrong on a transmission level. The Public Utilities
22 undertook investigation because there had been a major
23 power outage in the San Francisco area.

24 In recognition of how there was some overlap in
25 efforts at that the point of time, the Public Utilities

1 Commission and the Independent System Operators have
2 undertaken to develop of their own working agreement as
3 to how they will coordinate investigations in the future
4 that might cross over between the transmission and
5 distribution systems sets of the effects and, the that
6 document has been prepared in draft form and was put out
7 by the Public Utilities Commission for comment. The PUC,
8 when they put it out, informally expressed to the EOB
9 some expectations that the EOB might offer reflection on
10 it from the ISO-Oversight point of view. As it is right
11 now, that comment period has officially closed at the
12 PUC. We don't have any staff recommendation to you on
13 comments that would be made or communication that would
14 be made to the PUC on the subject area. So while it was
15 originally put in place here because we thought that
16 there might turn out to be an item of discussion for us,
17 but now we really don't have anything.

18 CHAIRMAN KAHN: Did the City of San Francisco
19 comment?

20 MR. SALTMARSH: The City and County of San
21 Francisco have been commenters at several stages during
22 the procedures. And I believe they filed comments on the
23 final -- what's been called the protocol for coordinating
24 communications between the ISO and the Power Exchange. I
25 will follow that up and provide the numbers of such

1 comments.

2 CHAIRMAN KAHN: I'd be curious to see if the city
3 was in accordance with the protocol.

4 Any other comments on this particular item?
5 Questions?

6 All right. Then No. 18. Mr. Saltmarsh?

7 MR. SALTMARSH: Let's see. Item No. 18 is a
8 management notice identification to you of the status of
9 the EOB as a party in a couple of proceedings before the
10 Public Utilities Commission. It has not been the case
11 nor has it been the expressed intention of the
12 Electricity Oversight Board to become any kind of a
13 regular participant of any regulatory proceedings of the
14 PUC. The purview that the EOB has recognized for itself
15 to date has not involved directing staff to participate
16 in retail rate making proceedings. Staff certainly
17 concurs with that thus far. There are a subset of
18 proceedings that are before of the PUC. Those for
19 transmission essentially certificates of public
20 convenience and necessity. And, the projects that would
21 come out of the ISO planning process and are projects
22 that would be built by the investor-owned utilities
23 fatly go before the PUC for a certificate of public
24 convenience and necessity. The first of those since re
25 structuring the electricity industry are before the PUC.

1 We're in a very early stage of the licensing stage. The
2 ISO has intervened as a party in those proceedings. The
3 EOB obtained party status in those proceedings as well.
4 We have not taken significant substantive positions to
5 this point, although in coordination with the California
6 ISO, we made coordinated filing in a prehearing
7 conference in one of these projects in which we suggested
8 that we thought that it was appropriate for the PUC to
9 consider as an item of new impression -- first impression
10 now, how the process of the ISO's grid planning
11 evaluation ought to be treated in the public PUC.
12 Previously, projects that were proposed by the utilities
13 that occurred that might be the first public review,
14 first time that they were aired or evaluated in any sort
15 of the public way or public process, it has been
16 suggested form a point of view of the public and in
17 economic efficiency in terms of not duplicating
18 prossesses -- either public processes or quasi-public
19 processes that the Public Utilities Commission reflect on
20 whether projects coming through the ISO's determination
21 of planning ought to have some different presumptive
22 status other than those that were just rendered by the
23 utilities previously.

24 PUC just came out with an order that says they do
25 intend to consider that. They intend to look at both the

1 process of the ISO and the fact that it occurred in a
2 state oversight authority as to whether that ought to
3 entitle the project from the presumption.

4 CHAIRMAN KAHN: What was the process by which it
5 was decided that EOB would be a participant?

6 MR. SALTMARSH: Prior to filing this
7 intervention, these interventions, a brief briefing
8 material went to the then acting chair of the Oversight
9 Board, who was the only voting member of the Oversight
10 Board, Mr. Lou Coleman. Mr. Coleman was, at that time,
11 holding the delegation that the board had given him prior
12 to the loss of a voting quorum, that he direct and manage
13 the activities of the staff, including any regulatory or
14 judicial litigation.

15 CHAIRMAN KAHN: So he decided --

16 MR. SALTMARSH: And he basically said it sounded
17 good if it was done in coordination with the ISO. It was
18 appropriate for the PUC to raise -- as one of their
19 issues they would look at whether projects coming out of
20 the ISO planning process are entitled to some sort of
21 rebuttal presumption, or whether or not they should be
22 immediate.

23 CHAIRMAN KAHN: Okay. Any questions?

24 Comment, Mr. Rozsa?

25 MR. ROZSA: I wonder if the ISO could come to the

1 table?

2 CHAIRMAN KAHN: We don't need the whole ISO, just
3 you Mr. Winter.

4 MR. ROZSA: Have you seen this memo.

5 MR. WINTER: I personally have not reviewed it.
6 Which memo are you talking about?

7 MR. ROZSA: It was a memo to the Board on Item
8 No. 18, staff report on the status of the EOB and ISO
9 proceedings.

10 MR. WINTER: No. I have to apologize. I got
11 that about a day and a half ago, and I haven't read every
12 item on it.

13 MR. ROZSA: Could you provide a copy to him?

14 MR. HEATH: Absolutely.

15 MR. ROZSA: On the first page in the last
16 paragraph the last sentence, it says, "The ISO grid
17 planning process should be afforded rebuttal presumption
18 of need. In suggesting that this is the appropriate
19 conclusion, the ISO notes some attributes of the -- it's
20 grid planning process including the grid plan was subject
21 to the regulatory oversight of the EOB."

22 Now, do you think that the ISO said that?

23 MR. WINTERS: I have not said that. I don't know
24 whether someone said that or not.

25 MR. ROZSA: Is it true that if the grid, if the

1 preparations and limitations of the grid plan is subject
2 to the regulatory oversights of the EOB?

3 MR. WINTERS: I would not say that it was in the
4 oversight. I think they have been involved in the
5 process and are aware of exactly what we're doing both in
6 the public meetings and at the board level, so I would
7 have to say they're certainly aware of it. I guess I
8 want go to point of saying it was oversight.

9 MR. ROZSA: So what did the ISO filing say?

10 MR. SALTMARSH: The ISO filing and the
11 participation at the prehearing conference by ISO counsel
12 Jeanne Sole make reference both to the fact that the ISO
13 is new, a new institution, and charge that various
14 aspects of meeting grid reliability, and specifically
15 noted in answer to what, in my conversations with Jeanne
16 Sole before and after that, what was characterized to me
17 as the anticipated potential criticism of whether or not
18 the ISO is itself is a public agency; and, therefore,
19 whether an action by the ISO ought to be changing the
20 actual process that the ISO did in fact make notes that
21 it itself in it's process was subject already to public
22 state agency oversight. And so the -- what came to the
23 PUC would also be at some level of state oversight.

24 MS. LARSON: I just want to state for the record,
25 Robin Larson, is the California ISO is that what Erik has

1 said is true. Jeanne Sole has made those comments in the
2 proceedings with of the PUC.

3 MR. ROZSA: Are they accurate?

4 MS. LARSON: What -- is what accurate?

5 MR. ROZSA: Are they accurate?

6 MS. LARSON: Yeah, they're accurate. I mean --

7 MR. ROZSA: Is the preparation of grid planning
8 subject to the regulatory oversight of EOB?

9 MS. LARSON: I don't think we've made comments to
10 the effect of regulatory oversight. I think we've talked
11 about -- I don't have the document in front of me. I
12 also just received this memo a day and a half ago, but I
13 do believe that the comments at the PUC recognize some
14 review and oversight by the Oversight Board, not using
15 the words regulatory oversight. We have not anticipated
16 a formal proceeding where the Oversight Board would
17 approve the grid plan or the projects therein.

18 MR. ROZSA: So, is the ISO going to propose that
19 the Oversight Board do some review of it's grid plan?

20 MS. LARSON: Once again at this time, and, Terry,
21 please help me out if I'm not staying this correctly. I
22 don't think that it is our thought that we would propose
23 a formal type of regulatory approval of our grid plan or
24 the projects. And I think it's up the Oversight Board to
25 discuss what appropriate oversight and review means.

1 MR. ROZSA: My last comment on this is that I
2 think this is a useful question, but the briefing paper
3 on this matter is not very complete and that we need a
4 much better analysis to have public discussion of this
5 issue. And I'd suggest that we defer the material until
6 such as documentation is available.

7 CHAIRMAN KAHN: Well, I think you're -- first of
8 all I take full responsibility, and I think that -- the
9 I think you're points are well taken. I think we've all
10 learned a little bit about language today that will
11 benefit in our future activities and a little bit about
12 how we do briefings. I will make one observation to
13 everybody and that is Mr. Willison and I are trotting on,
14 for our brains, virgin soil here, and the staff, I think,
15 decided that it would be good to introduce us to a lot of
16 things and some of them they could be more thorough than
17 others, and we do appreciate the fact that things weren't
18 complete. But, you know what, if they were a lot more
19 complete, we wouldn't have understood them anyway. We
20 will do better in the future, but I do appreciate your
21 comments.

22 Are we done with this one?

23 MR. SALTMARSH: I believe so, Mr. Chairman. This
24 was not an item on which any action was needed. It was
25 brought to you to make you aware of it, and I think what

1 Mr. Rozsa said reflects on what is appropriate in this
2 whole general area.

3 CHAIRMAN KAHN: Thank you, Mr. Winter and Ms.
4 Larson.

5 On to No. 19.

6 MR. HEATH: Mr. Chairman, just a moment please.

7 CHAIRMAN KAHN: Sure.

8 MR. HEATH: Mr. Chairman, for the sake of time,
9 and interest if we could move directly to Item No. 26.
10 It is the final action we're asking the board today.

11 CHAIRMAN KAHN: Does that mean we're skipping
12 items 19 through 25?

13 MR. HEATH: Yeah, I think for the sake of --
14 we've put a lot out today. Some of these items we can
15 put over for our next meeting and delve perhaps a little
16 bit further before we proceed on those items.

17 It's really up to the Chairman and the members if
18 they want to hear any specific item on that, but we're
19 willing to put those offers -- we're willing to accept
20 that and take up item 26 for the final action today.

21 CHAIRMAN KAHN: That's okay with me. If anyone
22 from the public came and wished to comment on any of
23 those items, I think they should be given an opportunity.
24 And if anyone from the dias would like to comment on them
25 and discuss any of them, please speak up.

1 SENATOR BOWEN: Actually, I'm pleased to think it
2 was put over because again I think the amount of
3 information that I have just -- I don't even know where
4 to start.

5 I will note, though, on page 81 of the briefing
6 materials that there isn't yet clear direction from the
7 administration on whether or not there's going to be a
8 coordinated effort regarding the federal legislation, and
9 so maybe that's something we can work on between now and
10 the next meeting.

11 CHAIRMAN KAHN: That's in Item 19?

12 SENATOR BOWEN: Right.

13 CHAIRMAN KAHN: My notes say why don't we do
14 that, so you and I are on the same wavelength, and I
15 think we did discuss that with staff that Senator Bowen's
16 point was well taken.

17 SENATOR BOWEN: And the other thing was just that
18 a note in the middle of the fourth -- first paragraph
19 forth line, there's a point that various federal
20 legislative proposals have the potential to produce
21 negative effect on the California market. I think that
22 may be true, but if we're going to say that in the public
23 document, that may make the authors of those proposals
24 unhappy. We ought to specify the particular concerns we
25 have rather than just lump them all into a basket. I

1 don't want to say that we should say that.

2 MR. SALTMARSH: I take blame and apologize. That
3 was written in the middle of the night. That was perhaps
4 wrongly but intentionally left vague and meant that if --
5 should, even if vague, have said they dealt with subject
6 areas that were so central to California that if they
7 were done wrong like collecting (inaudible) assets or
8 things like that could clearly conflict with California's
9 policies. It wasn't the case that they were necessary
10 any bad, but they overlapped and some cases were
11 preemptively effective and something that California was
12 concerned about.

13 CHAIRMAN KAHN: Okay. Mr. Rozsa, Mr. Willison,
14 is this all right.

15 All right. Then we'll jump to No. 26, and that
16 is the calendar.

17 Thank you very much, Senator.

18 We have a tentative calendar, and there's one
19 thing that I'm concerned about relating to it, and
20 perhaps most importantly, the March 27th meeting. Mr.
21 Rozsa and others actually have pointed out correctly that
22 the materials that we've gotten are thick, and they've
23 been criticized for not being thicker. And that being
24 the case, the question is do we want to do a catch-up
25 agenda on the 27th so that we just do the follow-up

1 things like the board and the like and some of the more
2 weighty items wait until subsequent meetings when we can
3 really have our briefing materials in order. I would
4 hate to try to transpose this entire agenda over to the
5 27th for example. So if we can agree that we'll have a
6 abbreviated agenda on the 27th that will address the
7 items that we were unable to deal with today that need
8 dealing with and of course we ought to consult Senator
9 Peace, Senator Bowen and Assemblyman Wright about what
10 other items they think are important.

11 Mr. Willison, does that make sense to you?

12 MR. WILLISION: That's fine.

13 CHAIRMAN KAHN: And second of all, Mr. Rozsa, do
14 you have a suggestion as to the time being how long in
15 advance do you think would be appropriate for us to have
16 the material.

17 MR. ROZSA: At a minimum standard, the ISO, for
18 example, has even abbreviated the standard.

19 How far in advance does your board need to have
20 the materials for your board meeting?

21 MR. WINTERS: We try to hit seven days for board
22 member and four days for notice identification.

23 MR. ROZSA: So all of the documents, all of the
24 documents which are going to be presented to the board
25 are available on your websites four days in advance of

1 the meeting?

2 MS. LARSON: Correct.

3 CHAIRMAN KAHN: Can you live with that?

4 MR. ROZSA: I can live with that.

5 CHAIRMAN KAHN: That standard is good. We have a
6 logistical issue with respect to use of a website.

7 Mr. Saltmarsh?

8 MR. SALTMARSH: We did discuss also the ability
9 to get timely posting of those for electronic access. At
10 the moment, we have our ability to make web postings
11 through another agency, and we did run into a problem in
12 this particular case where we were told that this was
13 impossible over a week period to get anything up because
14 there was at least a one-week window that we were in the
15 middle of where we won't be able to get anything.

16 CHAIRMAN KAHN: Why don't we do this. Why don't
17 we --

18 MR. SALTMARSH: So we want to explore ways to do
19 that because we certainly would encourage the use of that
20 as a tool.

21 CHAIRMAN KAHN: I think that we ought to be doing
22 that if we can. And if we can't, management ought to be
23 addressing that and making a recommendation, if
24 necessary, to the board. With that caveat that we'll
25 have an abbreviated agenda on the 27th, we will try for

1 our seven days and four days.

2 Mr. Heath?

3 MR. HEATH: Yes. I just wanted to bring to your
4 attention on the 27th they'll be actions taken both by
5 the ISO Governing Board as well the Power Exchange Board.
6 But I want to comment to just what you said trying to
7 confine to an abbreviated subject for the 27th, but there
8 will be important items that will come up relating --
9 like the TAC is a very good example of that access charge
10 that will be potentially need to be brought to the board
11 for potential action because it will be due relatively
12 soon after that.

13 CHAIRMAN KAHN: We want to make sure the briefing
14 papers are such for all of us as stated today.

15 I have one lawyer nit. That is we accepted
16 Senator Peace's suggestion of a 30-day putting over, and
17 then we're having a meeting in 27 days. Is that going to
18 cause some problems, and, if so, I will accept a friendly
19 amendment of the previous motions that say where it says
20 30 days, it can say 27.

21 Is that all right, Mr. Willison?

22 MR. WILLISON: Fine.

23 CHAIRMAN KAHN: I'll consider that moved,
24 considered, and passed, so nobody can say that we're
25 considering things out of turn. So we're going to try to

1 keep to this meeting schedule of March 27th, April 21st,
2 May 31st, June 29th, July 27th, and August 31st, but
3 these are -- from meeting to meeting, we may decide we
4 don't need them or we need others or that it's
5 inappropriate to meet so frequently, but I think in the
6 front end of this is we ought to get on with the
7 momentum.

8 Is that okay with you, Mr. Rozsa?

9 MR. ROZSA: Yes.

10 CHAIRMAN KAHN: Mr. Willison?

11 MR. WILLISON: (No audible response.)

12 CHAIRMAN KAHN: Okay. Then, do we need a closed
13 session, Mr. Saltmarsh?

14 MR. SALTMARSH: No, Mr. Chairman. There are no
15 items that we cannot put over to the next time.

16 CHAIRMAN KAHN: So are we done? Do we need a
17 motion to adjourn, or should we just go home.

18 MR. HEATH: Motion to adjourn.

19 CHAIRMAN KAHN: I accept the motion and second.
20 All in favor?

21 MR. WILLISON: Aye.

22 CHAIRMAN KAHN: Aye.

23 Passed two to nothing.

24 Thank you all very much.

25 (Meeting adjourned at 2:03 p.m.)

